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TRANSCRIPT OF RECORD

537028
on S. S. C.

Supreme Court of the United States

OCTOBER TERM, 1942

No. 173

**THE UNITED STATES OF AMERICA· EX REL.
MORRIS L. MARCUS, AND MORRIS L. MARCUS
IN HIS OWN BEHALF, PETITIONERS,**

vs.

WILLIAM F. HESS, ET. AL.

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR CERTIORARI FILED JUNE 23, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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APPENDIX.
IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

No. 748 Civil Action

UNITED STATES OF AMERICA on relation of **MORRIS L. MARCUS**, and **MORRIS L. MARCUS** in his own behalf,

v.

WILLIAM F. HESS, JOHN R. WILLIAMS, THOMAS G. HODGON, THOMAS G. HODGON, JR., C. W. RIDINGER, JR., C. W. RIDINGER, SR., WARREN I. BICKFORD, EDWIN C. CARTER, JAMES V. BURKE, G. L. CRAIG, WILLIAM S. TACANOWSKY, RALPH M. MORGANSTERN, MAX DANIELS, ALVIN S. MACNEIL, WALTER C. GLOEKLER, ROBERT B. YATER, H. L. FULLERTON, ROBERT C. CARMACK, K. K. WOOD, LOUIS H. BERKMAN, EDWARD B. SARGENT, individually and doing business as SARGENT ENGINEERING COMPANY, ROBERT N. MORRIS, individually and doing business as MORRIS ENGINEERING COMPANY, CHARLES M. CRONENWETH, individually and doing business as CRONENWETH ELECTRIC COMPANY, WILLIAM C. HEMMERLE, individually and doing business as W. C. HEMMERLE ELECTRIC COMPANY, JAMES C. DEVLIN, individually and doing business as DEVLIN ELECTRIC CONSTRUCTION COMPANY, NORMAN B. LEEKE, individually and doing business as DIAMOND ELECTRIC COMPANY, HERBERT D. HALE, individually and doing business as H. D. HALE ELECTRIC COMPANY, JAMES A. RODDEN, individually and doing business as RODDEN ELECTRIC COMPANY, RICHARD W. SCHINDLER, individually and doing business as R. W. SCHINDLER ELECTRIC COMPANY, DONALD R. ROSS, individually and

Relevant Docket Entries.

doing business as D. R. ROSS ELECTRIC COMPANY, JAMES H. STAUFFER, individually and doing business as STAUFFER ELECTRIC COMPANY, JOHN W. CRAIG, individually and doing business as J. W. CRAIG ELECTRIC COMPANY, R. G. DIODATI, individually and doing business as R. G. DIODATI AND BRO., IRWIN J. LEVINSON, individually and doing business as LEVINSON ELECTRIC COMPANY, BERNARD A. ROSS, individually and doing business as ROSS ELECTRIC COMPANY, JOHN E. HALE, individually and doing business as HALE ELECTRIC COMPANY, WALTER F. WEBER and J. R. WALTER, individually and as partners, doing business as FORT PITT ELECTRIC COMPANY, WINFIELD S. MARTIN and MICHAEL J. MURRAY, individually and as partners, doing business as MARTIN AND MURRAY, BENJAMIN RAPHAEL and ISRAEL RAPHAEL, individually and as partners, doing business as RAPHAEL ELECTRIC COMPANY, HESS AND BARTON, FRANKLIN ELECTRIC AND CONSTRUCTION Co., IRON CITY ENGINEERING Co., CARTER ELECTRIC Co., CRAIG ELECTRIC Co., G. L. CRAIG ELECTRIC Co., MORGANSTERN ELECTRIC Co., INC., DANIELS ELECTRIC CONSTRUCTION Co., MACNEIL ELECTRIC Co., STAR ELECTRIC AND CONSTRUCTION Co., INDUSTRIAL ELECTRIC Co., ELECTRICAL CONTRACTORS ASSOCIATION OF PITTSBURGH, INC., LORD ELECTRIC Co.

Relevant Docket Entries.

1940

- Jan. 25, Complaint filed.
- May 13, Answer of C. W. Ridinger, Sr. and Jr., Warren I. Bickford and Iron City Engineering Co. filed with acceptance of service thereon.
- Nov. 1, Praecipe for appearance of Wm. Eckert, Eugene Strassburger and J. V. Burke, Jr. for defendants filed.
- " " Amendment to answer of all defendants filed by leave of Court.

- Nov. 4, Plaintiffs' reply to the second defense of defendants' amended answer filed.
- " 14, Second amendment to answer of all defendants filed by leave of Court; *Ex die*, exception noted to plaintiffs and bill sealed.
- " 19, Motion to strike and answer to plaintiff's motion for inspection of minutes of testimony before Grand Jury filed by Geo. Mashank, Acting U. S. Attorney.
- " " Notice of motion, and acceptance of service; motion of plaintiff for inspection of minutes of testimony before the Grand Jury, filed.
- " " Hearing on application for examination of testimony taken before the Grand Jury at 10462 Crim., before Schoonmaker, J.
- " " Trial memo filed.
- " 26, Plaintiffs' reply to the second amendment to answer of all defendants filed. Withdrawal of motion for inspection of minutes of Testimony before the Grand Jury filed and order entered granting said motion filed.

1941

- Mar. 21, Point of C. W. Ridinger, Sr. for binding instructions refused and filed.
- " " Points of defendants other than Robert Carmack for instructions to jury filed and some affirmed, others refused.
- " " Points of defendants other than Robert Carmack for binding instructions filed and refused.
- " 22, The jury find a verdict in favor of plaintiff and against all defendants except Robert C. Carmack in the sum of \$315,100.91 being \$203,100.91 damages and \$112,000.00 penalty, and as to defendant Robert C. Car-

Relevant Docket Entries.

mack, a verdict in his favor—verdict filed.
Jury polled.

Mar. 22, Pursuant to above verdict judgment is hereby entered in favor of plaintiff and against all defendants except Robert C. Carmack in sum of \$315,100.91.

G. H. BERGER, *Clerk (J.ent.)*

Apr. 1, Motion for new trial filed.

" " Motion for judgment on reserved points filed by leave of court for all defendants other than Robert C. Carmack.

" " Motion for judgment on reserved point as to C. W. Ridinger, Sr., filed by leave of court.

" 15, Hearing on motion for judgment on reserved point before Schoonmaker, J. CAV.

Aug. 12, Opinion filed denying defendants' motion for new trial, Schoonmaker, J.

" 13, Order of Court filed and entered in accordance with above Opinion denying motion for new trial and refusing judgment on reserved point.

Sept. 19, Notice of appeal filed by defendants.

Nov. 8, Points to be raised on appeal filed by defendant with acceptance of service thereon, on Nov. 7, 1941.

" " Designation of record on appeal filed with acceptance of service thereon on Nov. 7, 1941.

" 22, On motion of appellees order entered extending time in which to file designation of additional portions of record to November 28, 1941; the appellant excepts to this order.

" 28, Appellees' designation of record on appeal filed with acceptance of service thereon.

Complaint.

UNITED STATES OF AMERICA on relation of **MORRIS L. MARCUS** and **MORRIS L. MARCUS**, in his own behalf, plaintiffs above named, bring this civil action against **WILLIAM F. HESS, ET AL.**, defendants above named on a cause of action whereof the following is a statement:

1. **MORRIS L. MARCUS**, the relator, is a citizen of the United States, residing in the City of Pittsburgh, County of Allegheny, State of Pennsylvania and that he institutes and prosecutes this action in the name of and for and on behalf of The United States of America and in his own behalf under and in pursuance of the statutes of the United States, in such cases made and provided by reason of Sections 231, 232, 233, 234 and 235 of Title 31 of the United States Code Annotated.

2. The defendants, **William F. Hess, Edward B. Sargent, Robert N. Morris, John R. Williams, Walter F. Weberg, J. R. Walter, Thomas G. Hodgdon, Thomas G. Hodgdon, Jr., Benjamin Raphael, Israel Raphael, C. W. Ridinger, Sr., Warren I. Bickford, C. W. Ridinger, Jr., Edwin C. Carter, James V. Burke, G. L. Craig, William S. Taczanowsky, Charles M. Cronenweth, John E. Hale, William C. Hemmerle, Ralph M. Morganstern, Max Daniels, James C. Devlin, Norman B. Leeke, Herbert D. Hale, Alvin S. MacNeil, Robert B. Yates, Winfield S. Martin, Michael J. Murray, James A. Rodden, Donald R. Ross, Richard W. Schindler, Walter C. Gloekler, James H. Stauffer, K. K. Wood, H. L. Fullerton, Louis H. Berkman, John W. Craig, R. G. Diodati, Irwin J. Levinson, Bernard A. Ross, Robert C. Carmack**, are citizens of the United States and residents of the County of Allegheny and State of Pennsylvania, and that at all times hereinafter mentioned said defendants were and still are such citizens and residents and subject to the provisions of the Laws of the United States.

3. That at all times hereinafter mentioned Hess & Barton, Franklin Electric and Construction Co., Iron City Engineering Co., Carter Electric Co., Craig Electric Co., G. L. Craig Electric Co., Morganstern Electric Co., Inc., Daniels Electric Construction Co., MacNeil Electric Co., Star Electric and Construction Co., Industrial Electric Co., Electrical Contractors Association of Pittsburgh, Inc., defendants above named were and now are corporations duly organized and existing under and by virtue of the laws of the State of Pennsylvania, having their respective principal places of business in the County of Allegheny, State of Pennsylvania and at all times hereinafter mentioned the Lord Electric Company was and is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, having its principal place of business in said County of Allegheny, State of Pennsylvania.

4. That during all or a part of the time hereinafter mentioned, the above named corporations and the following named persons were engaged in the business of electrical contracting, carrying on business in and about said County of Allegheny, State of Pennsylvania, and were members of said Electrical Contractors Association of Pittsburgh, Inc., that is to say:

William F. Hess was and is President of Hess & Barton; Edward B. Sargent was and is owner of Sargent Engineering Company; Robert N. Morris was and is owner of Morris Engineering Company; John R. Williams was and is Vice President of Lord Electric Company; Walter F. Weberg and J. R. Walter were and are partners doing business as Fort Pitt Electric Company; Thomas G. Hodgdon was and is President and Thomas G. Hodgdon, Jr., was and is Secretary of Franklin Electric & Construction Company; Benjamin Raphael and Isaac Raphael were and are partners doing business as Raphael Electric Company; C. W. Ridinger, Sr. was and is President, Warren I. Bickford was and is Secretary

and Treasurer, and C. W. Ridinger, Jr., was and is Manager of the Iron City Engineering Company; Edwin C. Carter was and is President of Carter Electric Company; James V. Burke was and is President of Craig Electric Company; G. L. Craig was and is Secretary and William S. Taczanowsky was and is President of G. L. Craig Electric Company; Charles M. Cronenweth was and is owner of Cronenweth Electric Company; John E. Hale was and is owner of Hale Electric Company; William C. Hemmerle was and is owner of W. C. Hemmerle Electric Company; Ralph M. Morganstern was and is President of Morganstern Electric Company, Inc.; Max Daniels was and is President of Daniels Electric Construction Company; James C. Devlin was and is owner of Devlin Electric Construction Company; Norman B. Leeke was and is owner of Diamond Electric Company; Herbert D. Hale was and is owner of H. D. Hale Electric Company; Alvin S. MacNeil was and is President and Robert B. Yates was and is Vice President of MacNeil Electric Company; Winfield S. Martin and Michael J. Murray were and are partners doing business as Martin & Murray; James A. Rodden was and is owner of Rodden Electric Company; Donald R. Ross was and is owner of D. R. Ross Electric Company; Richard W. Schindler was and is owner of R. W. Schindler Electric Company; Walter C. Gloekler was and is President of Star Electric & Construction Company; James H. Stauffer was and is owner of Stauffer Electric Company; K. K. Wood operated as an electrical contractor under his own name; John W. Craig was and is owner of J. W. Craig Electric Company; R. G. Diodati was and is owner of R. G. Diodati and Bro.; Irwin J. Levinson was and is owner of Levinson Electric Company; Bernard A. Ross was and is owner of Ross Electric Company; and that William F. Hess was and is President of said Electrical Contractors Association of Pittsburgh, Inc.; and Robert C. Car-

mack was and is Manager of said Electrical Contractors Association of Pittsburgh, Inc.

5. The defendants at all times hereinafter mentioned were not and are not in the military or naval forces of the United States or in the militia called into or actually employed in the service of the United States.

6. The acts of the defendants above named and each of them were done by the defendants in contravention and violation of the provisions of the laws and statutes of the United States, and more particularly the following:

"Sec. 80. (Criminal Code, section 35, amended.)
Presenting false claims; aiding in obtaining payment thereof. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same

to contain any fraudulent or fictitious statement or entry, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (R. S. Sec. 5438; May 30, 1908, c. 235, 35 Stat. 555; Mar. 4, 1909, c. 321, Sec. 35, 35 Stat. 1095; Oct. 23, 1918, c. 194, 40 Stat. 1015.)"

Sec. 80—Title 18—U. S. C. A.

"Sec. 83. (Criminal Code, section 35, amended) Conspiracy to defraud United States in regard to allowance or payment of false claims. Whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. (R. S. Sec. 5438; May 30, 1908, c. 235, 35 Stat. 555; Mar. 4, 1909, c. 321, Sec. 35, 35 Stat. 1095; Oct. 23, 1918, c. 194, 40 Stat. 1015.)"

Sec. 83—Title 18—U. S. C. A.

7. That for the purposes of relieving destitution, providing relief, creating and increasing employment, expediting a Public Works program and providing for work upon and construction of useful Public Works and projects, the Congress of the United States enacted the following named Acts and Joint Resolutions, to wit:

The Emergency Relief and Construction Act of 1932 (47 Statutes at Large, 709) approved July 21, 1932; The Federal Emergency Relief Act of 1933 (48 Statutes at Large, 55), approved May 12, 1933; The National Industrial Recovery Act (48 Statutes at Large, 195) approved June 16, 1933; The Emergency Relief Appropriation Act of 1935 (49 Statutes at Large, 115), approved April 8, 1935; The Emergency Relief Appropriation Act of 1936

(49 Statutes at Large, 1608) approved June 22, 1936; The Emergency Relief Appropriation Act of 1937 (50 Statutes at Large, 352), approved June 29, 1937; The Public Works Administration Extension Act of 1937 (50 Statutes at Large, 357), approved June 29, 1937; The Work Relief and Public Works Appropriation Act of 1938 (52 Statutes at Large, 809), approved June 21, 1938;

And pursuant to such Acts and Resolutions and to the orders and rules promulgated under their authority, certain sums of money were appropriated for the purposes declared in such Acts and Resolutions, and out of said sums of money there were allocated certain sums of money to aid in the alteration, repair and construction of buildings for public schools, hospitals, playgrounds, and other similar construction projects in and about the City of Pittsburgh and the County of Allegheny in the Western District of Pennsylvania, which projects, by names and descriptions so far as they are known to the United States and your relator, plaintiffs above named are enumerated in Exhibit "A" attached hereto and made part hereof.

8. That for the purpose of aiding each of said projects, a grant of money not to exceed the amount set opposite the name and description of each project listed in said Exhibit "A" was made by the United States of America through the Federal Emergency Administration of Public Works (commonly referred to as the Public Works Administration) to the owner (sponsor, awarding Authority) whose name appears opposite the name and description of each project in said Exhibit "A".

9. That for the purpose of letting the contracts for the electrical work, and other work in connection with said projects, and each of them, the awarding Authority of each such project, sometimes herein also referred to as the "owner" or as the "sponsor", advertised and called for bids from persons, including the defendants

herein, seeking to obtain electrical and other contracts for the performance of the work called for by said projects.

10. That the defendants above named throughout a period of time beginning on or about the first day of January, 1935 and continuing each and every day thereafter until about the third day of November, 1939 in the County of Allegheny, Pennsylvania and elsewhere, did knowingly, willfully, unlawfully and feloniously conspire, combine, confederate, agree and have a tacit understanding together and with each other and with divers other persons unknown to the United States and your relator, plaintiffs above named, to defraud and otherwise injure and damage the United States; as is more particularly set forth hereinafter.

11. That, while keeping up an appearance of competition and conveying to awarding Authorities the idea and belief that said Defendant Electrical Contractors were rival bidders, the defendants agreed that they would abate honest rivalry, avoid and prevent competition, deceive the awarding Authorities, prevent transmission to awarding Authorities of bids and, in effect, secure in advance the awarding of contracts to one of the Defendant Electrical Contractors selected by them; and so defeat the plain intent and purposes of said Acts and Resolutions and defraud the United States, all to the mutual profit of the Defendants and to the injury and damage of the United States.

12. That on numerous occasions, the exact numbers and dates of which are unknown to the United States and your relator, plaintiffs above named, the Defendant Electrical Contractors would each prepare his separate bid for electrical work on that one of the projects described in Exhibit "A" on which bids were then being invited and they would and they did all meet together in and at the offices of the said Association in the Union Trust Building in Pittsburgh, Pennsylvania,

and elsewhere and thereupon each would and did disclose to all present, the amount of his proposed bid, an average of the proposed bid price would be obtained and the bidder whose bid price was nearest the average would be selected as the person to submit the low bid to the awarding Authority, whereupon all other defendant Electrical Contractors desiring to bid would so adjust their bid figures and amounts as to make the bid of the person so selected the lowest.

13. That on other numerous occasions, the exact numbers and dates of which are unknown to the United States and your relator, plaintiffs above named, said Defendant Electrical Contractors desiring to bid on electrical work on that one of the projects described in Exhibit "A", for which bids were then being invited would and they did transmit their intended bids, by mail or otherwise, to said Association at its offices aforesaid and elsewhere, where on some occasions, the numbers and dates of which are unknown to the United States and your relator, plaintiffs above named, Defendant Robert C. Carmack would and he did either average said bids and choose, select and appoint the person who was to thereafter submit the low bid to the awarding Authority, or a committee of members of said Association, whose names are unknown to the United States and your relator, would and they did choose, select and appoint the person who was to submit the low bid to the awarding Authority.

14. That on other numerous occasions, the exact numbers and dates of which are unknown to the United States and your relator, said Defendant Electrical Contractors desiring to bid on electrical work on that one of the projects described in Exhibit "A", for which bids were then being invited would and they did meet at the William Penn Hotel or the Roosevelt Hotel, or the Fort Pitt Hotel, in Pittsburgh, Pennsylvania and elsewhere,

and agreed amongst themselves as to who should submit the low bid.

15. It was a further part of said conspiracy that, after making such selection by whatever methods used, and in order to effectuate the same and procure the awards of contracts to the person chosen, selected and appointed, the Defendant Electrical Contractors would and they did alter, change, decrease, increase and adjust their proposed bid prices in such manner so that, when said Defendant Electrical Contractors thereafter submitted their bids to the awarding Authority, the bid price of the person theretofore so selected, chosen and appointed would be the lowest of all those submitted.

16. It was a further part of said conspiracy that Defendants William F. Hess, Robert C. Carmack, and others, by threats of present and future injury to business would and they did seek to prevent and did prevent nonmembers of said Electrical Contractors Association of Pittsburgh, Inc. from transmitting or submitting any bids to the awarding Authority and would and they did seek to prevent and did prevent members thereof from submitting or transmitting bids to the awarding Authority other than by the manners and means hereinbefore described.

17. That the defendants above named in carrying out the said conspiracy falsely and fraudulently executed and delivered or caused to be executed and delivered certain certificates containing substantially the following:

"The undersigned hereby certifies that this Proposal is genuine and not sham or collusive, or made in the interest or in behalf of any person, firm or corporation not herein named, and that the undersigned has not, directly or indirectly, induced or solicited any other bidder to submit a sham bid, or any other person, firm or corporation to refrain from bidding, and that the undersigned has not in

Complaint.

any manner sought by collusion to secure for himself an advantage over any other bidder.

Firm name:

By:

Title:

Official Address:"

which certificates were false, fraudulent and fictitious and made for the purpose and with the intent of cheating and defrauding the Government of the United States.

18. That pursuant to the aforesaid conspiracy and in furtherance thereof, all of the aforesaid defendants through the fraudulent and unlawful conduct hereinbefore described did engage in sham and collusive bidding as above set forth, did falsely and fraudulently submit bids in furtherance of said conspiracy, did falsely and fraudulently receive awards and enter into said electrical contracts in furtherance of said conspiracy, did submit false and fraudulent written claims for payment thereof, did falsely and fraudulently receive from the United States Government large sums of money, and did make or cause to be made false and fraudulent statements or representations in regard to said bids and their claims thereon, and did make or use or cause to be made or used false and fraudulent certificate or certificates knowing the same to contain false and fraudulent or fictitious statements or entries for the purpose and with the intent of cheating and defrauding the Government of the United States, and that the Government of the United States was cheated and defrauded and sustained damages thereby in the following amounts on the following projects:

Complaint.

15

Official Designation	Description of Project	Damages sustained by the Government of the United States
Pa. 1633-F	McGee Playground	
Cont. 4	Bath & Field Hse.	\$ 140.85
Pa. 1633-F	Cowley-Goettman Playground	
Cont. 9	Swimming Pools	\$ 3,345.40
Pa. 1634-F	Burgwin Playground	
Cont. 4	Swimming Pool	\$ 2,191.50
Pa. 1687-F	Concord Elementary School	
	School	\$ 11,705.85
Pa. 1688-F	Schiller Elementary School	
	School	\$ 12,474.00
Pa. 1689-F	Whittier Elementary School	
	School	\$ 11,680.00
Pa. 1695-F	Blawnox Municipal Bldg.	
	Municipal Building	\$ 1,198.35
Pa. 1907-F	South Vocational High School	
	School	\$ 24,481.35
Pa. 1908-F	Miller Elementary School	
	School	\$ 11,282.37
Pa. 1920 F	West View High School	
	High School	\$ 19,771.20
Pa. 1600-F	Schenley Park	
Cont. 3	Comfort Sta.	\$ 624.15
Pa. 1600-F	McKinley Park	
Cont. 7	Field House No. 2	\$ 203.90
Pa. 1600-F	Sophia Evert Playground	
Cont. 14	Field House	\$ 399.60
Pa. 1600-F	Townsend Playground	
Cont. 35	Field House	\$ 204.75
Pa. 1600-F	Larimer Playground	
Cont. 37	Field House	\$ 211.95
Pa. 1612-F	Sophia Evert Playground No. 2	
Cont. 4	Field House	\$ 309.60
Pa. 1617-F	Arsenal Elementary School	
	School	\$ 14,789.25

Official Designation	Description of Project	Damages sustained by the Government of the United States
Pa. 1618-F	Crescent Elementary School	
	School	\$ 16,289.10
Pa. 1935-F	East End Elementary School	
	School	\$ 4,811.40
Pa. 1975-F	Homerville Jr. High School	
	School	\$ 13,649.80
Pa. 1977-F	Siebert School	
	School	\$ 1,264.15
Pa. 1987-F	West Penn Playground	
Cont. 6	Recreation Bldgs.	\$ 4,646.70
Pa. 2016-F	Spring Garden Elementary School	
	School	\$ 10,813.50
Pa. 2017-F	West Liberty Elementary School	
	School	\$ 6,810.75
Pa. 2018-F	Thad. Stevens Elementary School	
	School	\$ 17,049.15
Pa. 2019-F	Girls Vocational School	
	High School	\$ 6,262.65
Pa. 2023-F	East Ohio St.	
	Grade Crossing	\$ 1,102.50
Pa. 2154-F	Leech Farm	
	Tuberculosis Sanitarium ...	\$ 23,857.00
Pa. 2224-F	Shaler Twp.—Softening Plant	
	and Pumping Station	\$ 8,596.00
Pa. 1692-DS	Braddock Jr. High School	
	Jr. High School	\$ 33,485.22
Pa. 1703-DS.	Crafton Municipal Bldg.	
	Municipal Bldg.	\$ 2,580.75
Pa. 7000	Mifflin Twp.	
	Steam Heating Plant	\$ 12,084.50
Pa. 7000	North Park	
Cont. 3	Bath House	\$ 6,040.00
Pa. 7000-R	Municipal Airport	
Cont. 4-A	Airport Electrical Facilities	\$ 9,156.40
Pa. 7000-R	Municipal Airport	
Cont. 4-B	Airport Electrical Facilities	\$ 8,749.80

Official Designation	Description of Project	Damages sustained by the Government of the United States
Pa. 7000-R	Municipal Airport	
Cont. 4-D	Airport Electrical Facilities	\$ 10,020.10
Pa. 7000-R	Municipal Airport	
Cont. 4-E	Airport Electrical Facilities	\$ 7,980.70
Pa. 7000-R	Municipal Airport	
Cont. 4-F	Airport Electrical Facilities	\$ 9,324.60
Pa. 9616	North Park	
	Boat House	\$ 61,218.00
Pa. 1845-D	Western State Pen.	
	Penitentiary	\$ 23,219.00
Pa. 1649-F	Highland Park Zoo	
Cont. 7	Cat Room	\$ 405.35
Pa. 1456	Lincoln School Bldg.	
	School Add.	\$ 1,545.45
Pa. 2976	Homestead	
Cont. 206	High Level Bridge.....	\$ 11,760.35
Pa. 2976	Jerome St.	
Cont. 305	Bridge	\$ 6,066.00
Pa. 4242	County Home	
	County Home	\$ 51,416.66
Pa. 1924-F	Baldwin Twp. High School	
	High School	\$ 19,971.00
Pa. 7897	North Side Market	
	Market	\$ 5,625.00
Pa. 7501	Juvenile Court	
	Court and Detention Home	\$ 9,250.00
Pa. 1299	Perry High School	
	High School & Athletic Field	\$ 2,491.87
Pa. 1156	Spring Hill Elementary School	
	School	\$ 3,010.37
Pa. 1150	Carmalt Elementary School	
	School	\$ 8,501.50
Pa. 1392	Kenmar School	
	School	\$ 2,312.75

Official Designation	Description of Project	Damages sustained by the Government of the United States
Pa. 1317	Banksville Elementary School	
	School	\$ 9,243.37
Pa. 1303	Washington Trade School	
	School	\$ 28,461.12
Pa. 1302	Burgwin Elementary School	
	School	\$ 24,570.37
Pa. 1144	High School—No. Fayette, Pa.	
	School	\$ 6,544.37
Pa. 1189	School Bldg.—Chalfonte, Pa.	
	School	\$ 6,136.37
Pa. 1109	School	
	Port Vue, Pa.	\$ 6,540.00
Pa. 1458	Edwin Markham School	
	School, Mt. Lebanon, Pa.	\$ 2,659.12
Pa. 1310	Senior High School	
	School, Verona, Pa.	\$ 7,335.25
Pa. 1332	Vocational School	
	School, Clairton, Pa.	\$ 4,294.62
Pa. 1130	Westinghouse Memorial H. S.	
	School, Wilmerding, Pa.	\$ 25,772.75
Pa. 7000	Municipal Airport	
Cont. 4-C	Airport Electrical Facilities	\$ 8,964.30
Pa. 1173-RS	Prospect Jr. High School	
	School	\$ 19,372.50
Pa. 1546	School, Library, Pa.	
	Snowden Twp.—School	\$ 2,965.87
Pa. 1069	School Additional	
	Hampton Twp.	\$ 4,218.62
Pa. 1575	Filtration Plant	
	Braddock, Pa.	\$ 12,366.25
Pa. 1940-F	Greenwood School	
	School, Versailles Twp.	\$ 4,803.75
Pa. 2209-F	Municipal Building	
	Wilksburg, Pa.	\$ 16,255.25

Complaint.

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Official Designation	Description of Project	Damages sustained by the Government of the United States
Pa. 2142-F	Lincoln & Washington School	
	Adds.—Bridgeville, Pa.	\$ 4,106.25
Pa. 1600-F	Armstrong Playground	
Cont. 27	Field House	\$ 604.50
Pa. 1600-F	Frazier Playground	
Cont. 25	Field House	\$ 5,149.80
Pa. 1600-F	Sophia Evert Playground	
Cont. 29	Field House	\$ 399.60
Pa. 1600-F	Highland Park	
Cont. 31	Comfort Sta.	\$ 252.45
Pa. 1600-F	Garfield Playground	
Cont. 33	Field House	\$ 516.60
Pa. 1649-F	Highland Park Zoo	
Cont. 4	Zoo	\$ 690.75
Pa. 2208-F		
Cont. 6	Filter House	\$ 2,602.90
Pa. 2208-F		
Cont. 14	Filter House	\$ 1,136.25
Pa. 2208-F		
Cont. 12	Filter House	\$ 1,750.50
Pa. 2208-F		
Cont. 9	Filter House	\$ 1,692.90
Pa. 1612-F	Dunbar Playground	
Cont. 11	Field House	\$ 964.80
Total Damages Sustained by the Government of the United States		\$744,954.33

WHEREFORE, the plaintiffs demand judgment against the said Defendants in the sum of One Million Four Hundred Eighty-nine Thousand, Nine Hundred Eight Dollars and Sixty-six Cents (\$1,489,908.66) being double the amount of the damages sustained by the United States as above set forth, or such sum that the Court may

find, together with interest thereon in such cases made and provided; and

That the Court enter judgments against the defendants and each of them for the sum of Two Thousand Dollars (\$2,000.00) for each of the violations hereinbefore set forth as aforesaid in such cases made and provided.

That the Court enter judgment against the defendants for the cost of this suit.

Plaintiffs demand a jury trial.

(Signed) CHARLES J. MARGIOTTI,
" S. C. PUGLIESE,
" MARGIOTTI, EVANS & PUGLIESE,
" JOSEPH H. REICH,
Attorneys for Plaintiffs.

MARGIOTTI, EVANS & PUGLIESE
720 Grant Building,
Pittsburgh, Penna.
and

JOSEPH H. REICH
1208 Berger Building,
Pittsburgh, Penna.

EXHIBIT "A"

Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
McGee Playground	Pa. 1633-F	Bath and Field House	Pgh., Pa.	\$ 84,352.00	City of Pgh.
Cowley-Goettman Playground	Cont. 4	Swimming Pools	Pgh., Pa.	\$ 84,352.00	Pgh. Ally. Co., Pa.
Burgwin Playground	Pa. 1634-F	Swimming Pool	Pgh., Pa.	\$282,105.00	City of Pgh.
Concord Elementary School	Cont. 4	Pool	Pgh., Pa.	\$183,656.00	Pgh. Ally. Co., Pa.
Schiller Elementary School	Pa. 1688-F	School	Pgh., Pa.	\$240,850.00	School Dist. of City of Pgh.
Whittier Elementary School	Pa. 1689-F	School	Pgh., Pa.	\$225,312.00	Pgh. Ally. Co., Pa.
Blawnox Municipal Bldg.	Pa. 1695-F	Municipal Building	Boro. of Blawnox, Pa.	\$ 17,550.00	City of Pgh.
					Pgh. Ally. Co., Pa.
					" "
					" "
					The Boro. of Blawnox, Blaw. Ally. Co., Pa.

Complaint.

Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
South Vocational High School	Pa. 1907-F	School	Pgh., Pa.	\$ 33,851.00	School Dist. of City of Pgh.
Miller Ele. School	Pa. 1908-F	School	Pgh., Pa.	\$101,541.00	Pgh. Ally. Co., Pa. School Dist. "
West View High School	Pa. 1920-F	High School	West View, Pa.	\$162,405.00	School Dist. of the Boro of West View, Ally. Co., Pa.
Schenley Park	Pa. 1600-F Cont. 3	Comfort Sta.	Pgh., Pa.	\$ 82,965.00	City of Pgh.
McKinley Park	Pa. 1600-F Cont. 7	Field House No. 2	Pgh., Pa.	\$ 82,965.00	Pgh. Ally. Co., Pa. City of Pgh.
Sophia Evert Playground	Pa. 1600-F Cont. 14	Field House	Pgh., Pa.	\$ 82,965.00	Pgh. Ally. Co., Pa. City of Pgh.
Townsend Playground	Pa. 1600-F Cont. 35	Field House	Pgh., Pa.	\$ 82,965.00	Pgh. Ally. Co., Pa. City of Pgh.
Larimer Playground	Pa. 1600-F Cont. 37	Field House	Pgh., Pa.	\$ 82,965.00	Pgh. Ally. Co., Pa. City of Pgh.
Sophia Evert Playground	Pa. 1612-F Cont. 4	Field House	Pgh., Pa.	\$ 85,732.00	Pgh. Ally. Co., Pa. City of Pgh.
No. 2					Pgh. Ally. Co., Pa.

Complaint.

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Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Arsenal Elementary School	Pa. 1617-F	School	Pgh., Pa.	\$228,730.00	School Dist. of City of Pgh.
Crescent Elementary School	Pa. 1618-F	School	Pgh., Pa.	\$224,737.00	Pgh. Ally. Co., Pa. School Dist. of City of Pgh.
East End Elem. School	Pa. 1935-F	School	McKeesport, Pa.	\$ 94,950.00	Pgh. Ally. Co., Pa. School Dist. of the City of McKeesport, McKeesport, Ally. Co., Pa.
Homerville Jr. High School	Pa. 1975-F	School	Mifflin Twp., Pa.	\$358,200.00	School Dist. of Twp. of Mifflin Terrace, Mifflin Twp., Ally. Co., Pa.
Siebert School	Pa. 1977-F	School	Ross Twp., Pa.	\$ 35,248.00	School Dist. of Twp. of Ross, Bellevue, Ally. Co., Pa.
West Penn Playground	Pa. 1987-F Cont. 6	Recreation Bldgs.	Pgh., Pa.	\$202,320.00	City of Pgh., Pgh. Ally. Co., Pa.

Complaint.

Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Spring Garden Elementary School	Pa. 2016-F	School	Pgh., Pa.	\$139,108.00	School Dist. of City of Pgh., Pgh. Ally. Co. Pa.
West Liberty Elementary Sch.	Pa. 2017-F	School	Pgh., Pa.	\$ 94,841.00	School Dist. of City of Pgh., Pgh. Ally. Co. Pa.
Thaddeus Stevens Elementary Sch.	Pa. 2018-F	School	Pgh., Pa.	\$276,489.00	School Dist. City of Pgh., Pgh. Ally. Co. Pa.
Girls Vocational School	Pa. 2019-F	High School	Pgh., Pa.	\$ 45,080.00	School Dist. City of Pgh., Pgh. Ally. Co. Pa.
East Ohio St. Grade Crossing	Pa. 2023-F	Grade Crossing	Millvale Boro. Ally. County	\$ 76,050.00	School Dist. City of Pgh., Pgh. Ally. Co. Pa. Co. of Ally. Pgh. Ally. Co. Pa.
Leech Farm	Pa. 2154-F	Tuberculosis Sanitarium	Pgh., Pa.	\$286,285.00	City of Pgh., Ally. Co. Pa.
Shaler Twp. Softening Plant	Pa. 2224-F	Softening Plant and Pumping Sta.	Shaler Twp. Ally., Penna.	\$ 63,783.00	The Twp. of Shaler, Glenshaw, Ally. Co. Pa.

Complaint.

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Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Braddock Jr. High School	Pa. 1692-DS	Jr. High School	Braddock, Pa.	\$301,367.00	School Dist. of the Boro. of Braddock Brdk., Ally. Co. Pa.
Crafton Municipal Bldg.	Pa. 1703-DS	Municipal Bldg.	Crafton, Pa.	\$ 31,500.00	Boro of Crafton, Crafton, Pa.
Mifflin Twp. Steam Heating Plant	Pa. 7000	Steam Heating Plant	Mifflin Twp. Ally. Co., Pa.	\$576,837.00	County of Ally., Pgh., Pa.
North Park Bath House	Pa. 7000 Cont. 3	Bathhouse	Ally. Co., Pa.	\$576,837.00	The County of Ally., Pgh., Pa.
Municipal Airport	Pa. 7000-R Contract 4-A	Airport Electrical Facilities	Ally Co., Pa.	\$576,837.00	The County of Ally., Pgh., Pa.
Municipal Airport	Pa. 7000-R Contract 4-B	Airport Electrical Facilities	Ally Co., Pa.	\$576,837.00	The Co. of Ally. Pgh., Pa.
Municipal Airport	Pa. 7000-R Cont. 4-D	Airport Electrical Facilities	Ally Co., Pa.	\$576,837.00	The Co. of Ally. Pgh., Pa.

Complaint.

Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Municipal Airport	Pa. 7000-R Cont. 4-E	Airport Electrical Facilities	Ally. Co. Pa.	\$576,837.00	The County of Ally. Pgh. Pa.
Municipal Airport	Pa. 7000-R Cont. 4-F	Airport Electrical Facilities	Ally. Co. Pa.	\$576,837.00	The Co. of Ally. Pgh. Pa.
North Park Boat House	Pa. 9616	Boat House	McCandless Twp. Ally. Co. Pa.	\$492,750.00	Co. of Ally. Pgh. Pa.
Western State Pen.	Pa. 1845-D	Penitentiary	Pgh. Pa.	\$185,836.00	The Genl. State Authority, Hsbg. Pa.
Highland Park Zoo	Pa. 1640-F Cont. 7	Cat Room	Pgh. Pa.	\$114,288.00	City of Pgh., Pgh. Ally. Co. Pa.
Lincoln Sch. Bldg.	Pa. 1456	School Add.	Mt. Lebanon anon	\$ 13,909.00	School Dist. of the Twp. of Mt. Lebanon, Pgh. Ally. Co. Pa.

Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Homestead High Level Bridge	Pa. 2976 Cont. 206	Bridge	Pgh. Pa.	Loan— \$990,000.00 Grant— \$1,836,000	Allegheny County Authority, a Penna. Corp.
Jerome St. Bridge	Pa. 2976 Cont. 305	Bridge	Pgh. Pa.	Loan— \$990,000.00 Grant— \$1,836,000.00	Ally. Co. Authority, a Penna. Corp.
County Home	Pa. 4242	County Home	Woodville Collier Twp. Ally. Co. Pa.	\$713,000.00	Ally. Co. Home Woodville Ally. Co. Pa.
Baldwin Twp. High School	Pa. 1924-F	High School	Baldwin Twp. Ally. Co. Pa.	\$192,735.00	School Dist. of Twp. of Baldwin, Baldwin Twp. Ally. Co. Pa.
North Side Market	Pa. 7897	Market	Pgh. Pa.	\$ 71,000.00	City of Pgh. Pgh. Ally. Co. Pa.

Names	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Juvenile Court	Pa. 7501	Court and Detention Home	Pgh. Pa.	\$ 98,000.00	County of Ally. Pa.
Perry High School	Pa. 1299	High School and Athletic Field	Pgh. Pa.	\$ 19,935.00	School Dist. of City of Pgh., Pgh. Ally. Co. Pa.
Spring Hill Elementary School	Pa. 1156	School	Pgh. Pa.	\$ 24,083.00	School Dist. of The City of Pgh., Pgh. Ally. Co. Pa.
Carmalt Elem. School	Pa. 1150	School	Pgh. Pa.	\$ 66,012.00	School Dist. of the City of Pgh. Ally. Co. Pa.
Kenmar School	Pa. 1392	School	Kennedy Twp.	\$ 18,502.00	School Dist. of the Twp. of Kennedy, Ally. Co. Pa.
Banksville Elem. School	Pa. 1317	School	Pgh. Pa.	\$ 73,947.00	School Dist. of the City of Pgh., Pgh. Ally. Co. Pa.

Complaint.

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Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Washington Trade School	Pa. 1303	School	Pgh. Pa.	\$211,689.00	The School Dist. of Pgh., Pgh. Ally. Co. Pa.
Burgwin Elem. School	Pa. 1302	School	Pgh. Pa.	\$196,563.00	School Dist. of City of Pgh., Pgh. Ally. Co. Pa.
High School	Pa. 1144	School	No. Fayette Pa.	\$ 52,363.00	School Dist. of Twp. of North Fayette, Ally. Co. Pa.
School Bldg.	Pa. 1189	School	Chalfonte, Pa.	\$ 49,091.00	School Board of Chalfonte Boro. Ally. Co. Pa.
School	Pa. 1109	School	Port Vue, Pa.	\$ 49,091.00	School Dist. of Boro. of Port Vue, Ally. Co. Pa.
Edwin Markham School	Pa. 1458	School	Mt. Lebanon, Pa.	\$ 21,273.00	School Dist. of the Twp. of Mt. Lebanon, Mt. Leb. Twp. Ally. Co. Pa.

Complaint.

Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Senior High	Pa. 1310	School	Verona, Pa.	\$ 58,682.00	School Dist. of Boro of Verona, Verona, Ally. Co. Pa.
Vocational School	Pa. 1332	School	Clairton, Pa.	\$ 34,357.00	School Dist. of the City of Clairton, Ally. Co. Pa.
Westinghouse Memorial High School	Pa. 1130	School	Wilmerding, Pa.	\$206,182.00	School Dist. of the Boro. of Wilmerding, Wilmerding, Ally. Co. Pa.
Municipal Airport	Pa. 7000 Cont. 4-C	Airport Electrical Facilities	Mifflin Twp. Ally. Co. Pa.	\$576,837.00	County of Ally. Pgh. Pa.
Prospect Jr. High School	Pa. 1173 RS	School	Pgh., Pa.	\$154,980.00	School Dist. of the City of Pgh. Pgh. Ally. Co. Pa.

Complaint.

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Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
School	Pa. 1546	School	Library, Pa. Snowden Twp.	\$ 23,727.00	School Dist. of Snowden Twp. Ally. Co. Pa.
School Additionals	Pa. 1069	School	Hampton Twp. Ally. Co. Pa.	\$ 33,750.00	School Dist. of Twp. of Hampton Ally. Co. Pa.
Filtration Plant	Pa. 1575	Filtration Plant	Braddock, Pa.	\$ 98,931.00	Boro of Braddock Braddock, Ally. Co. Pa.
Greenwood School	Pa. 1940-F	School	Versailles Twp. Pa.	\$ 38,430.00	School Dist. of Twp. of Versailles Ally. Co. Pa.
Municipal Building Lincoln & Washington School Adda.	Pa. 2209-F Pa. 2142-F	Municipal Bldg. School Additions	Wilkinsburg, Pa. Bridgeville, Pa.	\$130,041.00 \$ 32,850.00	Boro. of Wilkinsburg, Ally. Co. Pa. School Dist. of Boro of Bridgeville, Bridge. Ally. Co. Pa.
Armstrong Playground	Pa. 1600-F Cont. 27	Field House	Pgh., Pa.	\$ 82,965.00	City of Pgh. Pgh. Ally. Co. Pa.

Complaint.

Name	Official Designation	Character	Location	Amount of U. S. Funds Allocated	Awarding Authority, Sponsor, Owner
Frazier Playground	Pa. 1600-F	Field	Pgh., Pa.	\$ 82,965.00	City of Pgh.
Municipal Hosp. Bldg.	Cont. 25	House			Pgh. Ally. Co. Pa.
	Pa. 2218-F	Hospital Building	Pgh., Pa.	\$900,000.00	City of Pgh.
Sophia Evert Playground	Pa. 1600-F	Field	Pgh., Pa.	\$ 82,965.00	Pgh. Ally. Co. Pa.
Highland Park	Cont. 29	House			City of Pgh.
	Pa. 1600-F	Comfort Sta.	Pgh., Pa.	\$ 82,965.00	Pgh. Ally. Co. Pa.
	Cont. 31				City of Pgh.
Garfield Playground	Pa. 1600-F	Field	Pgh., Pa.	\$ 82,965.00	Pgh. Ally. Co. Pa.
Highland Park Zoo	Cont. 33	House			City of Pgh.
	Pa. 1649-F	Zoo	Pgh., Pa.	\$114,248.00	Pgh. Ally. Co. Pa.
	Cont. 4				City of Pgh.
Filter House	Pa. 2208-F	Filter	Pgh., Pa.	\$124,700.00	City of Pgh.
	Cont. 6	Hse.			Ally. Co. Pa.
Filter House	Pa. 2208-F	Filter	Pgh., Pa.	\$124,700.00	City of Pgh.
	Cont. 14	Hse.			Ally. Co. Pa.
Filter House	Pa. 2208-F	Filter	Pgh., Pa.	\$124,700.00	City of Pgh.
	Cont. 12	Hse.			Ally. Co. Pa.
Filter House	Pa. 2208-F	Filter	Pgh., Pa.	\$124,700.00	City of Pgh.
	Cont. 9	Hse.			Ally. Co. Pa.
Dunbar Playground	Pa. 1612-F	Field	Pgh., Pa.	\$ 85,732.00	City of Pgh.
ground	Cont. 11	Hse.			Pgh. Ally. Co. Pa.

**Answer of C. W. Ridinger, Sr., and Jr., Warren I.
Bickford and Iron City Engineering Co.**

The defendants, C. W. Ridinger, Sr., C. W. Ridinger, Jr., Warren I. Bickford and Iron City Engineering Co., admit the allegations of fact contained in the paragraphs numbered 2, 4 and 7 of the complaint; admit the allegations of fact contained in paragraph 3, except that the Iron City Engineering Co. is incorporated under the laws of New Jersey, not Pennsylvania, and except that the principal place of business of the Industrial Electric Co. is in Beaver County, not Allegheny County, Pennsylvania, and that of the Lord Electric Company is in the City and State of New York, not Allegheny County, Pennsylvania; admit the allegations of fact contained in paragraph 5, except as to the defendant Edwin C. Carter, who at all times material to this case was in the military forces of the United States; admit the allegations of fact contained in paragraph 9, with the qualification that the advertisements for bids were general and no bids were called for from the defendants specially or personally; and deny each and every other allegation contained in the complaint.

**JOHN J. JACKSON
WILLIAM H. ECKERT
SMITH, BUCHANAN & INGERSOLL**
*Attorneys for C. W. Ridinger,
Sr., and Jr., Warren I. Bick-
ford and Iron City Engineer-
ing Co.*

1025 Union Trust Bldg.,
Pittsburgh, Pa.

(A similiar answer was filed by each other defendant).

34 *Amendment to Answer of All Defendants.*

Amendment to Answer of All Defendants.

Each and all of the defendants in the above-entitled case hereby amends his, its or their respective answer by adding thereto the following:

SECOND DEFENSE

At No. 10462 Criminal in this Court the defendants have each and all been indicted, pleaded nolo contendere, been duly sentenced and have paid the fines imposed upon them, respectively, by this Court, for the same alleged acts which are made the basis of the present suit. The present suit, is, therefore, barred by said former punishment for the same alleged offenses.

**WILLIAM H. ECKERT
EUGENE B. STRASSBURGER
J. V. BURKE, JR.
*Of Counsel for all
Defendants.***

**1025 Union Trust Building,
Pittsburgh, Pennsylvania.**

**Plaintiffs' Reply to the Second Defense of Defendants'
Amended Answer.**

The plaintiffs deny that at No. 10462 Criminal in this Court, the defendants have each and all been indicted, pleaded nolo contendere, been duly sentenced and have paid the fines imposed upon them, respectively, by this Court, for the same alleged acts which are made the basis of the present suit. And the plaintiffs specifically deny that the present suit is, therefore, barred by said former punishment for the same alleged offenses.

MARGIOTTI, EVANS & PUGLIESE
CHAS. J. MARGIOTTI
JOSEPH H. REICH
JOSEPH A. ROSSI
Attorneys for Plaintiffs

720 Grant Building
Pittsburgh, Penna.

Second Amendment to Answer of All Defendants.

Each and all of the defendants in the above entitled case hereby amends his, its or their respective answer by changing the second defense to read as follows:

SECOND DEFENSE

At No. 10462 Criminal in this Court the defendants have each and all been indicted, pleaded nolo contendere, been duly sentenced and have paid the fines imposed upon them, respectively, by this Court, at No. 10463 Criminal the defendants Franklin Electric Construction Co. and Thomas G. Hodgdon, at No. 10464 Criminal the defendants Franklin Electric Construction Co. and Thomas G. Hodgdon, Jr., at No. 10465 Criminal the defendants MacNeil Electric Co. and Robert B. Yates, at No. 10466 Criminal the defendants MacNeil Electric Co.

and Alvin S. MacNeil, at No. 10467 Criminal the defendant K. K. Wood, at No. 10468 Criminal the defendant Walter F. Weberg, at No. 10469 Criminal the defendant J. H. Stauffer, at No. 10470 Criminal the defendant R. W. Schindler, at No. 10471 Criminal the defendant Edward B. Sargent, at No. 10472 Criminal the defendant D. R. Ross, at No. 10473 Criminal the defendant Bernard A. Ross, at No. 10474 Criminal the defendant J. A. Rodden, at No. 10475 Criminal the defendants Israel Raphael and Benjamin Raphael, at No. 10476 Criminal the defendant Robert N. Morris, at No. 10477 Criminal the defendants Morganstern Electric Co. and R. M. Morganstern, at No. 10478 Criminal the defendant W. S. Martin, at No. 10479 Criminal the defendants Lord Electric Co. and J. R. Williams, at No. 10480 Criminal the defendant I. J. Levinson, at No. 10481 Criminal the defendant Norman B. Leeke, at No. 10482 Criminal the defendants Industrial Electric Co. and H. L. Fullerton, at No. 10483 Criminal the defendants Hess and Barton, Inc., H. C. Barton and William F. Hess, at No. 10484 Criminal the defendant William Charles Hemmerle, at No. 10485 Criminal the defendant H. D. Hale, at No. 10486 Criminal the defendants Star Electric and Construction Co. and W. C. Gloekler, at No. 10487 Criminal the defendant R. G. Diodati, at No. 10488 Criminal the defendants Daniels Electric Construction Co. and M. Daniels, at No. 10489 Criminal the defendant J. C. Devlin, doing business as Devlin Electric Construction Co., at No. 10490 Criminal the defendant C. M. Cronenweth, at No. 10491 Criminal the defendants G. L. Craig Electric Co., William Taczanowsky and G. L. Craig at No. 10492 Criminal the defendants C. L. Craig Electric Co. and William Taczanowsky, at No. 10493 Criminal the defendants G. L. Craig Electric Co. and G. L. Craig, at No. 10494 Criminal the defendants Craig Electric Co. and J. V. Burke, at No. 10495 Criminal the defendant Louis H. Berkman, at No. 10496 Criminal the defendant J. E. Hale, at No. 10497

Criminal the defendant John W. Craig, and at No. 10498 Criminal the defendants Carter Electric Co. and Edwin C. Carter were each indicted for making false certificates in connection with the conspiracy charged in the indictment at No. 10462 Criminal. It was agreed between the United States of America and the defendants above named that the fines imposed and paid at No. 10462 Criminal should be deemed as punishment for the offenses charged in all of the aforesaid indictments, and said fines were accepted by the United States of America in compromise and full satisfaction of all of said indictments and of all of the criminal liability of the defendants for the alleged conspiracy in bidding and for the making of any false certificates by them regarding such bidding. The alleged acts and offenses involved in said prior criminal proceedings are the same as those which are made the basis of the present suit. The present suit is, therefore, barred by said former punishment for the same alleged offenses.

WILLIAM H. ECKERT
EUGENE B. STRASSBURGER
J. VINCENT BURKE, JR.
*Of Counsel for all
Defendants*

1025 Union Trust Building
Pittsburgh, Pennsylvania.

**Plaintiffs' Reply to the Second Amendment to Answer
of All Defendants.**

The plaintiffs admit the averments set forth in the second defense as stated that at No. 10462 Criminal in this Court the defendants have each and all been indicted, pleaded nolo contendere, been duly sentenced and have paid the fines imposed upon them, respectively, by this Court. Said sentence and fine related only to said indictment at No. 10462 Criminal. The plaintiffs admit that at No. 10463 Criminal the defendants Franklin Electric Construction Co. and Thomas G. Hodgdon, at 10464 Criminal the defendants Franklin Electric Construction Co. and Thomas G. Hodgdon, Jr., at No. 10465 Criminal the defendants MacNeil Electric Co. and Robert B. Yates, at No. 10466 Criminal the defendants MacNeil Electric Co. and Alvin S. MacNeil, at No. 10467 Criminal the defendant K. K. Wood, at No. 10468 Criminal the defendant Walter F. Weberg, at No. 10469 Criminal the defendant J. H. Stauffer, at No. 10470 Criminal the defendant R. W. Schindler, at No. 10471 Criminal the defendant Edward B. Sargent, at No. 10472 Criminal the defendant D. R. Ross, at No. 10473 Criminal the defendant Bernard A. Ross, at No. 10474 Criminal the defendant J. A. Rodden, at No. 10475 Criminal the defendants Israel Raphael and Benjamin Raphael, at No. 10476 Criminal the defendant Robert N. Morris, at No. 10477 Criminal the defendants Morganstern Electric Co. and R. M. Morganstern, at No. 10478 Criminal the defendant W. S. Martin, at No. 10479 Criminal the defendants Lord Electric Co. and J. R. Williams, at No. 10480 Criminal the defendant I. J. Levinson, at No. 10481 Criminal the defendant Norman B. Leeke, at No. 10482 Criminal the defendants Industrial Electric Co. and H. L. Fullerton, at No. 10483 Criminal the defendants Hess and Barton, Inc., H. C. Barton and William F. Hess, at No. 10484 Criminal the defendant William Charles Hem-

merle, at No. 10485 Criminal the defendant H. D. Hale, at No. 10486 Criminal the defendants Star Electric and Construction Co. and W. C. Gloekler, at No. 10487 Criminal the defendant R. G. Diodati, at No. 10488 Criminal the defendants Daniels Electric Construction Co. and M. Daniels, at No. 10489 Criminal the defendant J. C. Devlin, doing business as Devlin Electric Construction Co., at No. 10490 Criminal the defendant C. M. Cronenweth, at No. 10491 Criminal the defendants G. L. Craig Electric Co., William Taczenowsky and G. L. Craig, at No. 10492 Criminal the defendants G. L. Craig Electric Co. and William Taczenowsky, at No. 10493 Criminal the defendants G. L. Craig Electric Co. and G. L. Craig, at No. 10494 Criminal the defendants Craig Electric Co. and J. V. Burke, at No. 10495 Criminal the defendant Louis H. Berkman, at No. 10496 Criminal the defendant J. E. Hale, at No. 10497 Criminal the defendant John W. Craig and at No. 10498 Criminal the defendants Carter Electric Co. and Edwin C. Carter were each indicted for making false certificates. However, a nolle prosequi was entered upon motion and order on indictments Nos. 10463 to 10498 inclusive. Plaintiffs deny that indictments Nos. 10463 to 10498 inclusive were in connection with the conspiracy charged in the indictment at No. 10462 Criminal. The plaintiffs further deny that it was agreed between the United States of America and the defendants above named that the fines imposed and paid at No. 10462 Criminal should be deemed as punishment for the offenses charged in all of the aforesaid indictments, and specifically deny that the said fines were accepted by the United States of America in compromise and full satisfaction of all of said indictments and of all of the criminal liability of the defendants for the alleged conspiracy in bidding and for the making of any false certificates by them regarding such bidding. The plaintiffs further deny specifically that the alleged acts and offenses involved in said prior criminal proceedings

are the same as those which are made the basis of the present suit. Wherefore, the plaintiffs specifically deny that the present suit is, therefore, barred by said former punishment for the same alleged offenses.

CHAS. J. MARGIOTTI,
JOSEPH ROSSI,
JOSEPH REICH,
S. C. PUGLIESE,
MARGIOTTI, EVANS & PUGLIESE,
Attorneys for Plaintiffs.

Transcript of Portions of Trial.

JOHN F. LABOON, a witness produced on behalf of plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Margiotti:

[8]* Q. Do you have any knowledge yourself as to the method of payment of the contract?

A. Yes, sir.

Q. What was that method?

A. We provided in our contracts—and we always do, as a matter of fact—for payment on the basis of monthly estimates—

Mr. Eckert:

Q. You are talking about the County's payments?

A. That is right. Under our arrangement, our resident engineer estimates the amount of work which the contractor has completed during the current period, whether that is a month or two weeks—it is usually a month, and so stipulated, the time is stipulated. In the

* Numbers in brackets refer to pages of copy of trial proceedings in record on appeal.

case of PWA contracts, such as this one here under discussion, the Homestead High Level Bridge, the estimate of our resident engineer was submitted to the local official representing the PWA, who then approved it and it was placed in order for payment.

Q. What is PWA?

A. That is Public Works Administration.

Q. Of what?

A. That is the official designation—of United States of America, I suppose.

[9] Q. Do you know whether in the case of the Homestead High Level Bridge the job was paid for in full?

A. Yes, I can tell you that. It was not paid in full.

You mean—

Q. The contractor, the electrical contractor.

A. Oh, we paid the contractor in full, that is correct.

Q. You have stated that PWA approved your estimates before payments were made to the contractors. Is that right?

A. That is correct.

Q. In that connection, were the contractors required to submit any information to you on making the estimates, or any bills or statements?

A. Not necessarily. They were required to submit a payroll—in fact, that is a requirement in all County contracts now; we require the contractor to submit a detailed payroll; and we have in our contracts, of course, a minimum wage clause. We usually made the estimate ourselves, we felt we were capable enough to do that work; but if the contractor did not agree, he had a right to, of course, protest; and if he could convince us that our estimate was entirely too low, we might bring it up to a point where we thought it was a fair estimate, but we tried to make a fair estimate.

p. 1 line

CROSS EXAMINATION.

Mr. Strassburger:

[21] Q. Now, this weekly payroll that was submitted to your office by the contractors in each of these cases was submitted so that you could ascertain whether or not they were maintaining the wage scale. Is that correct?

A. That was the prime purpose of it.

Mr. Eckert:

[22] Q. When you talked about a contract being entered into for the Homestead High Level Bridge, that contract was between the County of Allegheny on the one hand and the Rodden Electric Company on the other hand. Is that right?

A. Strictly speaking, that was between the Allegheny County Authority and the Rodden Electric Company. There is a little distinction there. I believe that contract was entered into before the Allegheny County Authority was dissolved and absorbed by the County of Allegheny.

Q. But in each of these cases that you have referred to, the contract was either between the County or the Allegheny County Authority on the one hand and the electrical contractor on the other hand?

A. That is true.

Q. The United States Government was no party to those contracts?

Mr. Margiotti: That is objected to, because the contract speaks for itself, and that is a conclusion.

The Court: Yes, that is a conclusion. The contracts themselves will show who were the parties to them, if they are produced. Are they going to be produced?

Mr. Eckert: Of course, that is what we have asked from the beginning.

The Court: If they are not going to be produced, I will let you pursue this cross examination now.

Mr. Eckert: We think by all means the contracts should be produced, that they are the best evidence of their terms. But Mr. Margiotti has asked Mr. Laboon some general questions, and I want to bring out that those contracts are wholly between the County on the one hand, or whatever the authority might be, like the Allegheny County Authority or some other municipality, and the electrical contractor. They were bi-party contracts, not tri-party contracts.

Mr. Margiotti: That is correct.

The Court: Is the question objected to?

Mr. Margiotti: Yes, it is.

The Court: If the question is objected to, we will sustain the objection; but, however, say that this witness may be recalled for further cross examination in case the contracts themselves are not produced.

Mr. Eckert: That is satisfactory to us.

[23] Q. You refer to a contract between the County and the Federal Government. That contract was entered into before the County even advertised for bids from contractors. Isn't that right?

A. That is true.

Q. And, of course, therefore, the contract between the County and the Federal Government was entered into before any contract was entered into between the County and the electrical contractors?

A. That is correct.

Q. And the contract between the County and the Federal Government was also entered into before the contractors ever submitted any bids to the County?

A. That is correct.

Q. When you said that the contractors had been paid in full the amount called for by their contracts on these several jobs about which you have testified, by whom were they paid?

A. The County of Allegheny.

Q. By the County of Allegheny?

A. That is right.

Q. You referred to Ingham & Boyd as the architects for the Juvenile Court building. By whom were they hired?

A. They were hired by the previous Board of County Commissioners.

Q. But by the County of Allegheny?

A. That is right; by the County of Allegheny.

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RE-CROSS EXAMINATION.

[27] *Mr. Eckert:*

Q. Director, in your redirect examination you have testified that the contractors on some other jobs, like the Jerome Street job, have been paid in full. There again you mean that the contractor was paid in full by the County of Allegheny. Is that right?

A. That is right, yes, sir.

Q. And when you testified before that after you had made your monthly estimates of the work done, and that had been checked by the PWA inspector on the job, that you then put the requisition through for payment. You mean payment by the County; is that right?

A. That is right.

.

Mr. Margiotti:

[28] A. I have the plans and specifications for the Juvenile Court Building, that the architect sent over.

Q. Do you know them to be the plans and specifications?

A. No, sir, I wouldn't be able to tell, because, as I say, the architect alone had complete detail supervision of this job, and we were merely in the picture to see that—when the building was finished I made the final inspection to see all details were completed; but I would not be able to tell you whether these were the plans or not.

Q. Well, let us have them anyhow, and we will mark them.

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M. M. STEEN, a witness produced on behalf of plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Margiotti:

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[43] Q. So that in this Plaintiff's Exhibit 25 we have "Portion of Government Grant for Electrical Work"; that is the total amount of forty-five per cent paid by the Government, and you paid fifty-five per cent?

A. We paid fifty-five per cent.

[44] Mr. Strassburger: That is objected to, as not a proper statement of what occurred here as we developed in yesterday's testimony. The School Board paid it all, and there was a grant made to the School Board. That is not a fair question, Your Honor.

Mr. Margiotti: The School Board did the paying, but it got the money from the Government.

The Court: As I would interpret the cross examination and the answers of the witness, it had reference to the disposition of the Government funds received by the School Board.

Mr. Margiotti: That is what I had in mind.

The Court: And, as I look at it, it doesn't change the testimony that the funds paid to the contractors were in fact paid by the School Board. The

grant of the Government was to the School District and not to anyone else.

Mr. Margiotti: For that purpose.

The Court: Yes, for the purpose of this work.

Mr. Strassburger: I know, but the way the question was asked the inference might be drawn that the contractors got something from the Government, and they did not.

Mr. Eckert: That is a conclusion to be drawn by Your Honor, and not for Mr. Margiotti to put in via the witness. We object to the question and move to strike out the answer, on the ground the question is incompetent, irrelevant and immaterial, asking for a conclusion which is for the Court to draw, and bad in form, leading also—this is direct examination.

The Court: It is a summation in a way of what is shown on the paper itself, and there is no testimony from this witness really needed for that. We have the specific facts, and that is all that is legally proper to bring out on the witness stand. It looks to me merely like an explanation of what is shown upon Exhibit 25. I do not see how any conclusion can be drawn from that, from what the witness has said in answer to the question propounded by Mr. Margiotti, that the money was paid to the electrical contractor by the Government, when as a matter of fact under all the evidence the grant was made to the School Board, who contracted with the contractors and raised that much money from the Government to apply on the contract. That is all I see in it.

Mr. Margiotti: That is correct.

[54] *Mr. Margiotti:*

Q. I now refer to Exhibits 25 and 26. You stated for Mr. Strassburger that you would be able to tell what

was the cause of the withholding of a portion of the grant on seven of the electrical contracts; and I will now begin with the Arsenal School, in which you show grant due \$2500. Have you some explanation on that from your records?

A. Yes; that is project 1617-F, I believe?

Q. That is right.

A. The explanation of the differences between the amount of the grant requisitioned and the amount paid, as received from the Federal Government, Federal Works Agency, has this note: "The amount of \$2500 withheld from this payment is a temporary suspension pending receipt of advice as to what action the owner decides to take against the electrical contractor in relation to bid irregularities." And that is the reason given for the withholding of that \$2500.

Q. Very well. That comes directly from the PWA?

A. Yes, that comes directly from the PWA; it is under the signature of J. J. Madigan, Executive Officer.

Q. Now, take Concord, Pa. 1687-F, grant due \$1500.

A. This has this note attached to the same type of paper: "The amount of \$1500 is withheld pending further action by the City with regard to the collusive bidding on the electrical contract."

Q. By the City?

A. I read it just as it is stated here.

[55] *Mr. Margiotti:*

Q. The Schiller School, Pennsylvania 1688-F, and the amount mentioned here is \$2,000.

A. This also carries the note on that same type of paper: "The amount [56] of \$2,000 withheld from this payment is a temporary suspension pending receipt of advice from the owner as to what action the owner will

take against the electrical contractor due to bid irregularities."

CROSS EXAMINATION.

[65] *Mr. Eckert:*

Q. And those breakdowns were only for the purpose of estimating the total cost of the project. Isn't that right?

A. Yes, I think that is right.

Q. And then the Federal Government agreed to grant you forty-five per cent of that estimated total cost?

A. That is correct.

Q. And that is all the Federal Government agreed to do?

A. That is all they agreed to do, was to give forty-five per cent of the total cost as it was arrived at by those estimating methods.

[69] *Mr. Eckert:*

Q. Mr. Steen, you said that the contractors would turn in monthly estimates for payment on account?

A. That is right.

Q. Turned in to whom, did you mean—the School Board?

A. Yes, to the School Board.

Q. And then the School Board would get its engineer in charge of that job to approve that monthly estimate, and then the PWA inspector, and then you said those requisitions would come in for payment. Do you mean they would come back to the School Board at the Administration Building out in Oakland, and there the School Board would actually pay those monthly estimates? Is that right?

A. That is right, yes.

Q. The actual payment, then, was made to the contractors by the Board of Education of the City of Pittsburgh?

A. It was.

Q. And these affidavits known as Exhibits 47, 48, and 49 were sent in by the contractors to the School Board, together with their proposals. Is that right?

A. No, I don't think that is the way. I am sure that wasn't done that way. The contractor figured the job, put in his bid, and then we had the authority to have them sign non-collusion affidavits in this particular form if we so desired. We would bring the contractor in.

Q. By "we", you mean the School Board?

A. Yes, the School Board, the sponsor of the project. We would bring them in and have them sign these non-collusion affidavits.

Q. You mean the School Board would call the low bidder in and get him to sign?

A. Yes. In some cases we took other bidders, too. This applied not only for the principal contractors, but there was a non-collusion affidavit prepared for sub-contractors as well that we had a number of them execute.

[70] Q. When you say "we", you always refer to the Board of Education of the City of Pittsburgh?

A. That is right. It was left entirely in our hands whether we would employ them or not.

Q. Those affidavits were given, then, to the Board of Education of the City of Pittsburgh?

A. They were.

Q. In these quotations which you read from communications from the Federal Works Agency this morning, explaining why funds had been withheld by the PWA on some of the grants, the term "Owner" is used in a phrase something like this: "Suspended from payment pending suit by the owner against the electrical contractor."

A. That is right.

Q. To whom does the term "Owner" refer?

A. The Board of Education.

Mr. Margiotti: That is objected to. Let that speak for itself. It is drawing a conclusion.

A. (Continued) That word "Owner" is defined in the documents.

Q. Just show us the document that defines the term "Owner".

A. Here is the term here, Mr. Eckert. Shall I read it?

Q. Yes.

A. "The term 'Owner' wherever used hereinafter shall be understood to embrace and include the Superintendent of Buildings of the Board, present incumbent C. L. Woodridge, who has with due authority approved and issued these said drawings and specifications by affixing his signature to said drawings and to said specifications on the last page thereof."

Q. What Board is it that is referred to there?

A. Here is the definition of "Board". "The Board of Public Education of the School District of Pittsburgh, Pa."

Q. You were reading from the contract documents relating to the Girls Vocational High School?

A. Yes, I was reading from the Girls Vocational High School at that time. I just picked one up at random.

Q. Is the term "Owner" referred to, Mr. Steen, generally, and in other places in connection with these projects, as referring to the local municipality which actually constructs the project and enters into the contract with the local contractors?

A. Well, I can speak for the Board of Education that that is so. The term "Owner" does apply in that way throughout these documents.

Q. To the Board of Education of the City of Pittsburgh?

A. Yes, it does.

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RE-DIRECT EXAMINATION.

Mr. Margiotti:

[72] Q. Will you state whether or not these contracts were submitted to the PWA for approval?

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A. They were approved by the PWA.

Q. How is that approval exhibited?

A. Well, they stamped the document and signed it by the Associate Director of the District.

Q. Will you please read the approval?

A. "Approved as to conformity with agreement between the applicant and the United States of America. G. Douglas Andrews, Associate Director Region No. 1."

.

Mr. Margiotti:

[74] Q. Was the affidavit that you have mentioned here submitted to the Government—the PWA?

A. You mean the ones we had here this morning?

Q. Yes, the ones you had here this morning, in connection with the contract.

A. I don't think they were submitted to the Government.

Q. Were they shown to anybody?

A. They were introduced. The Government requisition asked for them in their trial, but they weren't submitted to them prior to that.

Q. I mean at the time the contractor signed them.

Mr. Eckert:

Q. The trial you are referring to is the Grand Jury Investigation about a year ago?

A. Yes, that is right.

Mr. Margiotti:

Q. What I had in mind was, at the time the contract was signed was that submitted to the Government—the PWA?

A. That non-collusion affidavit?

Q. Yes.

A. No.

Q. You simply retained that in your own files?

A. Yes, we took it for ourselves.

* * * * *

Mr. Eckert:

[75] Q. Was this work done under the direction of the School Board—the construction of these different buildings?

A. Yes, it was directly under, you might say, the direction of the Building Department of the Board, as their particular department attends to that phase of the work.

* * * * *

JOSEPH J. MITCHELL recalled, testified as follows:

DIRECT EXAMINATION.

Mr. Margiotti:

* * * * *

[81] Q. Were they turned over to the contractor, and the contractor gets his pay on them?

A. Are the estimates turned over to him?

Q. Yes.

A. No. The estimates are turned over to the Controller of Allegheny County, and he pays the contractor, who receipts for the same.

Q. Who presents them to the Controller?

A. The Department of Public Works.

Mr. Eckert:

Q. Of the County?

A. Of the County, yes.

Mr. Margiotti:

Q. Will you state whether or not those estimates when they are prepared—whether they are submitted to the contractor?

A. Yes; the contractor signs them before he presents them to the Accounting Department of the Department of Public Works, and then from there they go to the County Commissioners, who also approve them for payment before they go to the Controller.

* * * * *

CROSS EXAMINATION.

* * * * *

[83] *The Witness:* The reason I say that is because the PWA auditors—that is, the United States Government—make a separate audit every time they give us a percentage of the job. In other words, to begin with, they will make a first audit of ten per cent, and grant us ten per cent outright of the cost of the job; and then at a certain interval they will give us another fifteen per cent, and then another fifteen per cent, and—There is forty-five per cent involved, and the last ten per cent usually comes after the completion of the job, after all the estimates are paid. Now, when an estimate is paid it is shown right in the PWA audit, and, of course, we get ten per cent of that when the job is finished. In other words, any job—

* * * * *

HARRY HIVELY, a witness produced on behalf of the plaintiff, having been duly sworn, testified as follows:

CROSS EXAMINATION.

Mr. Eckert:

[101] Q. Mr. Hively, will you tell us from what fund these vouchers that you have produced here for the projects in question are actually paid?

A. This (indicating) is North Side Market, I don't know what exhibit number—

Q. I am not referring to that project alone, I mean all these projects.

A. Well, this particular North Side Market, we paid from two funds. That was the first grant we ever got from the Government, and we put their money in one bank account and put ours in the other, and we paid out of that from the Government and the City.

Q. And on the other projects, how did you handle them?

A. They were all paid out of the bond fund; originally they were all paid out of the bond fund.

Q. Your vouchers were paid out of a City account in which it puts the proceeds of bond issues?

A. Yes, sir.

Q. And then would you put the funds from the PWA into that bond account to reimburse it later?

A. Yes, sir.

Mr. Margiotti:

[102] Q. Do you maintain a construction account?

A. Yes, sir.

Q. And what goes into the construction account?

A. The proceeds from the bonds that we sold and the Government money that they turned over to us.

Q. In selling bonds, did you sell bonds for the entire cost of a project, or for fifty-five per cent of it?

Mr. Strassburger: If he knows.

Q. (Continuing) Of course. Don't answer, if you don't know; just say, "I don't know".

A. We sold bonds in the amount of eight million dollars, which we say was our fifty-five per cent; and then we called on the Government as the work progressed to get their forty-five per cent in.

Q. I see. So that this fund consisted then of money you got from the sale of bonds and the money you got from the Government. Your bond money was fifty-five per cent, and the Government's money was forty-five?

A. We didn't get the forty-five per cent yet; we were getting it gradually.

[103] Q. As you got it, anyhow, it went into that fund?

A. Yes.

Q. And these payments were made out of that fund?

A. Yes, sir, out of the bond fund.

Q. You call that the bond fund?

A. The bond fund construction account.

Q. Were there any other payments made out of this fund, the bond fund or construction account, as you call it, except for PWA projects?

A. No.

Q. Was there a bank used in connection with this account, or was it maintained by the City? Was there a bank used?

A. We put the Government money in one bank and put our money in another bank.

Q. And did you do that in all those cases?

A. All these cases.

Q. So that you kept the Government's money separate and apart even from the bond money?

A. We drew the warrants or checks on the bond fund.

Q. Yes?

A. Then we would apportion the certain amount that should be paid out of the Government fund and wrote out a check and got the money out of the Government fund and transferred it back into our fund for their share.

Q. But you kept the Government's money—

A. Separate.

Q. (Continuing)—separate and apart from your own funds?

A. Up until the time we started to spend it.

Q. And then when you had to spend it, you spent it as you were required to under the conditions laid down by the PWA?

Mr. Eckert: Objected to, as calling for a conclusion and leading.

Mr. Margiotti: All right. I withdraw it; I think it is both.

Q. When would you draw out of the Federal account?

A. Every fifteen days.

Q. And what would you draw?

A. We would draw a check on the Government money.

[104] Q. For what?

A. For part of these costs that had been going on, that we had originally paid from our fund.

Mr. Margiotti:

Q. Will you state whether or not you were permitted to withdraw the money that you had in a separate account in which you kept the Federal aid money—call it that—without the approval of the Government in some form?

A. We drew it out first without their approval,

but they would come along later and audit it and see if it was all right, and if it wasn't we would have to make a return. They haven't objected to anything yet.

[105] Q. And this original voucher is approved by the City account, the architectural designer, and the Director of the Department of Public Works. Is that correct?

A. Yes, sir; that voucher came from the Department of Public Works.

Mr. Eckert: Those are all officers of the City of Pittsburgh?

Mr. Margiotti: That is right; there is no question about that.

CROSS EXAMINATION.

Mr. Eckert:

[107] Q. Mr. Hively, who actually signed the checks which the contractors received on the projects to which you have referred?

[108] A. They were signed by a check writing machine, and on the plate was the Mayor, the Mayor's secretary, and the City Controller.

Q. Those are all officers of the City of Pittsburgh?

A. Yes.

Q. Were those checks countersigned by any PWA representative?

A. No, sir.

Q. When the Government money was received, as it has been referred to, was it deposited in an account in a bank in the name of the City?

Mr. Margiotti: That is objected to, because the bank account would be the best evidence.

The Court: Well, this witness is on cross examination. Go ahead.

Q. Answer the question.

A. In the City of Pittsburgh, PWA Docket Number

so-and-so, and the project,—street, sewers, playgrounds, or whatever it was.

Q. And that account was subject to check by the City of Pittsburgh?

A. Yes.

Q. And the City would from time to time draw checks itself against that account and deposit them to its bond account, out of which it originally paid for the electrical work on these different projects?

A. That is right.

Q. Nobody else except the City could check against that account. Isn't that right?

A. In that account the Mayor didn't sign those checks; it was the City Treasurer and the City Controller that signed those checks to get them over to our funds.

Q. But nobody other than the City could draw funds out of that account?

A. No, sir.

Q. The only difference in the case of the North Side Market job was that the City drew checks itself against this account in which you put the PWA money directly to the contractors. Is that it?

A. Yes, sir.

Q. But those were checks of the City of Pittsburgh?

A. Yes, sir.

Q. The exhibits which you have produced here, starting with a voucher on top, consist of a record of the check issued to the contractor, together with the supporting data which the City required before it made the payment to the contractor. Is that right?

A. That is right.

[109] Q. After the voucher on top—which, I take it, is made by the same operation of the machine as the check itself. Is that right?

A. Yes, sir.

Q. (Continuing) — is a paper entitled "Departmental Invoice. To be transmitted to Controller in duplicate. City of Pittsburgh". Is that wholly signed by officers of the City of Pittsburgh?

A. It is.

Q. And then the next sheet is one entitled "City of Pittsburgh, Department of Public Works, Bureau of Engineering. Current Estimate so-and-so". Are all of the officials who signed that estimate under this certification "I hereby certify that the work has been done in strict accordance with plans, specification and ordinances relative to the same, and that the contractor has fully complied with all the conditions of the contract" officials of the City of Pittsburgh?

A. Yes, these are all City of Pittsburgh officials.

Q. And are the signatures of the officials on the back of that Current Estimate form also those of officials of the City of Pittsburgh?

A. Yes. This is the engineer (indicating), and this is the probate clerk in our office who swears the engineer to the estimate (indicating).

Q. That is, the engineer of the City of Pittsburgh?

A. Yes.

Q. And the bottom sheet, entitled "Periodical Estimate for Partial Payment No. so-and-so", a yellow form, is also an estimate of the work done during the previous month, signed by the contractor first, then by Nathan Schein, Senior Designing Engineer, as an officer of the City of Pittsburgh?

A. He is; Nathan Schein is.

Q. And after it had been signed in this instance by Mr. Schein on October 21, 1939, it was signed by the PWA inspector on October 24, 1939. Is that right?

A. He is the Government inspector.

Q. Yes. PWA? Is that right?

A. Yes.

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M. M. STEEN recalled, testified as follows:

CROSS EXAMINATION.

Mr. Eckert:

[115] Q. By whom were the checks signed that the contractors received in payment for their work?

A. They were signed by the Controller.—

Q. Controller of what?

A. The School Board Controller; by the School Board Treasurer, the Secretary of the School Board, and either the President or Vice President of the School Board.

Q. Were those checks or any checks received by the contractors signed by any official of the PWA?

A. No.

Q. You say you would open a separate bank account for each one of these new schools?

A. That is correct.

Q. And in whose name was that account?

A. That was the Board of Education.

Q. The Board of Education of the City of Pittsburgh?

A. City of Pittsburgh—School District of Pittsburgh.

Q. And then, for your own accounting purposes, you would designate that with some number. Is that it?

A. Yes. It all came under Item 15, PWA construction account, and the moneys in there had to be certified to the Government that they covered the fifty-five per cent that we were obligated for. They had to be certified to by the bank officials.

[116] Q. But the account was in the name of the Board of Education of the City of Pittsburgh?

A. That is correct.

Q. And then, for your own record, you identified each account as No. 15?

A. That appears on all these checks—Item No. 15.

Q. And in those accounts you would deposit the proceeds of the sale of bonds of the School District?

A. Yes.

Q. And the funds received from the PWA, and any other funds of the School Board that might be available for the construction of these schools. Is that right?

A. That is correct.

Q. The PWA couldn't draw any funds out of those bank accounts, could it?

A. They could not.

Q. These periodical estimates for partial and final payment which you have produced here this afternoon were made up in way you outlined in your testimony either yesterday or the day before. Is that right?

A. Yes, they were.

Q. They would be signed first by your—that is, the Board of Education's registered architect and Superintendent of Buildings in charge of the job?

Mr. Margiotti: First by the contractor.

Q. (Continued) First by the contractor, and then by the men I mentioned?

A. That is right.

Q. In this case yourself? (Indicating file marked as an exhibit)

A. Yes.

Q. On the one I am showing you, relating to the South Vocational School?

A. Yes.

Q. And then by the PWA inspector?

A. That is correct.

Q. Now, could not the School District pay the contractor even though the inspector of the PWA on that particular job did not certify that the amount of work that the periodical estimate called for had been done?

A. I think they could have paid if they had cared

to jeopardize the grant participation in the amount he did not attest to.

[117] Q. But the School Board, could, if they had wanted to, pay the contractor even though the PWA inspector had not concurred in that particular payment?

A. I think they could.

HARRY HIVELY recalled, testified as follows:

CROSS EXAMINATION.

Mr. Eckert:

[120] Q. Just so we get this straight, Mr. Hively, is it correct that the checks that were issued to the contractors in payment for their work were checks issued and signed wholly by officials of the City of Pittsburgh on the bond account of the City of Pittsburgh?

A. That is right.

Q. And into that bond account, which I take it was in the name of the City, wasn't it?

A. Yes, sir.

Q. You would deposit from time to time funds that you had received from the PWA. Is that right? But you deposited those funds from the PWA first in a separate account?

A. Yes.

Q. And then from time to time transferred the funds from that PWA account to your bond account?

A. That is right.

Q. Now, this account in which you first deposited the PWA money after the City received it was also in the name of the City of Pittsburgh. Isn't that right?

A. Yes, sir.

Q. And that account was subject to check only by the City of Pittsburgh?

A. That is right.

LOUIS C. GROSHARDT, a witness produced on behalf of plaintiff, having been duly sworn, testified as follows:

CROSS EXAMINATION.

Mr. Eckert:

[130] Q. The electrical contractor was paid by the School District of the Borough of Chalfant?

A. All bills were paid by the School District on the construction of the building.

Q. The checks that the contractor received in payment for the electrical work were checks of the School District of the Borough of Chalfant?

A. That is right; a special account they had, a construction fund, to keep it separate from other school funds.

Q. Was that construction account in the name of the School District in the bank?

A. Yes. The School District had various accounts, and designated as Chalfant School District Construction Accounts, and similar Sinking Fund Accounts, and all in the name of the School District.

Q. And that account was subject to check only by the School District of the Borough of Chalfant?

A. That is right.

Q. And in that construction account you deposited the proceeds from the sale of the bonds, and also what money you received from the PWA?

A. Yes.

PAUL HUGHES, a witness produced on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Margiotti:

[143] Q. State how you handled your bank transactions with reference to the construction of this school.

A. We set up a separate bank account for this job only, under instructions from PWA to do so, and the officers of the Board were given authority to pay contractors upon approval of the work by the architect and approval by the PWA inspector.

Q. And what funds did you place in that account?

A. We placed in the fund the amount of approximately \$7,000 from the Board's current funds, the forty-five per cent as we received it from the Government, and the balance was a small bond issue which we floated.

Q. In other words, then, you put your fifty-five per cent and the Government's forty-five per cent in the same fund, and you paid for the entire job out of that fund?

A. That is right.

Q. I assume, after obtaining approval, the School Board did the paying?

A. Yes.

Q. That is all. Bring that file with you when you come back—that big, thick file.

CROSS EXAMINATION.

Mr. Eckert:

Q. By whose checks was the contractor, the Industrial Electric Company, for the electric work, paid?

A. By the School Board's check, specially marked to show this separate bank account which we had set up.

Q. The checks, however, were signed solely by officers of the School Board. Is that right?

A. Yes.

Q. In whose name was this bank account?

A. The bank account was in the name of Ross Township School District—Construction Account was the way we labeled it.

[144] *Mr. Margiotti:*

Q. What is that?

A. PWA Construction Account was the way we labeled it.

Mr. Eckert:

Q. That is the way you identified it from your other accounts?

A. Yes, from our other account.

Q. But in this account you placed some current funds belonging to the School District, the proceeds of some bond issue that the School District sold, and the fund received from the PWA?

A. That is right.

Q. The architect that you referred to was employed by the School Board?

A. Yes.

Q. These papers constituting Exhibit 122, entitled "Periodical Estimate for Partial Payment", Partial No. 2, No. 3 and "Periodical Estimate for Partial Payment No. 4 and Final", were furnished by you to the contractor. Is that it? Or did the architects make those up?

A. They came to me from the architect.

Q. The first that you know about that—

A. The first I saw them, I get them from the architect.

[145] *Mr. Eckert:* Well, we object to the understanding and ask it be stricken.

The Court: It may be stricken.

Mr. Eckert:

Q. The first you know about these sheets that comprise Exhibit 122 is that you received them from your architect?

A. That is right.

Q. And who was your architect in charge of this job?

A. Press C. Dowler.

Q. And after you received these periodical estimates, what would you do then?

A. If they were also approved by the PWA registered engineer inspector, I made checks for them, had them signed by the proper officers of the Board, and paid the contractor.

Q. Mr. Dowler was in charge of the construction of this school, was he?

A. Yes.

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WALTER R. DRIPPS resumes the stand.

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CROSS EXAMINATION.

Mr. Eckert:

[155] **Q.** That account was in the name of the Borough of Blawnox. Is that right?

A. Yes, sir.

[156] **Q.** Who could check on that account—that is, just the Borough of Blawnox. Is that right?

A. The Borough of Blawnox, yes, sir.

Q. And nobody else?

A. Nobody else.

Q. The checks that were issued to the contractor in payment for his work on the Blawnox Municipal Building were signed solely by officers of the Borough of Blawnox. Is that right?

A. Yes, sir.

Q. I show you one of those checks, and ask you whose signatures those are on there—not the names of the men, but what offices they held.

A. President of Council, and the Borough Secretary, myself.

Q. And the Borough Treasurer over here (indicating) ?

A. Yes, sir.

Mr. Margiotti: If Your Honor please, so as to shorten that branch of the case, I am willing to stipulate that on all these accounts the checks that were given to the contractors in payment for their work were signed by officers of the sponsors, and that there appeared no name of an officer of the PWA, and that will shorten it in all these cases. I am willing to stipulate that on the record, because that is the way it was done. That is what you are trying to prove, and I am willing to stipulate that is true.

Mr. Eckert: Of course, that is all right with us. That is, of course, in accordance with what we understand to be the fact, and what we are trying to bring out.

Mr. Margiotti: And there is no question about it. So I am willing to stipulate it, that all checks in each project referred to in the complaint—payment was made by checks issued by the sponsors on bank accounts which are to be described, of course, by each witness.

Mr. Eckert: And that the checks were signed solely by officers of the local municipality which entered into the contract with the contractor?

Mr. Margiotti: Yes, that is true.

Mr. Eckert: And that they were the checks of the local municipality.

Mr. Margiotti: I will agree that they were the checks so long as that does not imply it was the

fund of the municipality. I will agree to that, that they were checks—that is, the paper itself or the check book was a check book of the municipality. That is true.

Q. These periodical estimates for partial payment, as well as the estimate for final payment, were presented to you and were the basis on which you wrote the checks, the checks that were given to the contractor in payment for his work. Is that right?

[157] A. Yes, sir.

Q. I am referring to the periodical estimates for partial payment and the final estimate which comprise a part of Exhibit 130.

A. That is right.

Q. In addition to funds received from the PWA, what other funds did you deposit in this account in the Aspinwall Branch of the Commonwealth Trust Company?

A. \$21,450.00 of Borough money.

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WALTER D. FERREE, a witness produced on behalf of plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Margiotti:

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[166] A. We employed a clerk of the Works on our project, and these items were paid on authorization from him by memorandum.

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CROSS EXAMINATION.

Mr. Eckert:

[171] Q. The work was done by the contractors with whom the School District of the Borough of Wilmerding contracted?

A. That is right.

Q. The electrical work by the Morris Engineering Company?

A. That is right.

Q. And the work was done under the direction of the architects hired by the School District. Isn't that right?

A. Yes, sir.

Q. And you also had a clerk employed, as you say, who was in constant and detailed contact with this one job?

A. That is right.

Q. And in addition to that, the PWA had an inspector there?

A. Yes, sir. The architect had his inspector in addition to the clerk of the Works who was on the job. That is right.

Q. You had your architects in charge of the work, and, in addition to that, the architects had one of their inspectors, as you say, on the work all the time?

A. Yes, sir, full time.

Q. And you had this clerk hired by the School Board on the job all the time, too. Is that right?

A. That is right.

Q. Was the PWA inspector there all the time or not? Do you know that?

A. I believe he had another project under his supervision.

Q. So he would only be at your school part of the time. Is that right?

A. That is right.

Q. The immediate direction, then, was under the School District?

A. That is right.

Q. In whose name was this account in the bank that you referred to?

A. Wilmerding School District.

Q. And that was subject to check only by the Wilmerding School District?

A. That is right.

Q. The estimates for payment, such as Exhibit No. 136, were presented to you. Is that right?

[172] A. That is right.

Q. As the Secretary of the School Board. Is that right?

A. Yes, sir.

Q. And then was it you who wrote the checks to the order of the Morris Engineering Company?

A. Yes, sir.

Q. And those checks it is agreed were signed solely by officers of the School Board?

Mr. Margiotti: If you are going to repeat that every time, I am going to withdraw the agreement.

Mr. Eckert: That is agreed to, is it?

Mr. Margiotti: Very much so.

Q. Were there some extras added to the electrical work which the Morris Engineering Company did?

A. Yes; a change in a panel or something of that nature.

Q. Was the amount of the contribution from the PWA increased on account of that extra work, Mr. Ferree?

A. No, sir.

Q. What was the amount that you actually received from the PWA?

A. \$206,182.00.

Q. And the extra work, then, was paid for wholly by the School District of the Borough of Wilmerding?

A. That is correct.

Q. The architects that you referred to were hired by the School District?

A. Yes, sir.

ALFONSE R. FERRUCI recalled, testified as follows:

CROSS EXAMINATION.

Mr. Eckert:

[174c] Q. Do I understand that the final estimate forms which are bound together as Exhibit 137 would come to the City, and it was on the basis of those, then, that the City would make the payment?

[174d] A. That is right.

Q. These forms, then, were presented to the City in order that the contractor could get his money from the City. Is that right?

A. Yes, sir.

WILLIAM C. EVANS, a witness produced on behalf of plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Margiotti:

[181] Q. Mr. Evans, the Terms and Conditions have a requirement concerning the construction account. I suppose you are acquainted with that requirement?

A. Yes, sir.

Q. What did you do with reference to that requirement on the maintenance of a bank account in connection with the project?

A. We opened an account, labeled under the name Construction Account School District of the Borough of Braddock, in the First National Bank of Braddock.

Q. Did you give it a number?

A. No; just Construction Fund, is what it was called. That is all the check was headed, and there is a regular voucher that the School District uses, signed by the president and the secretary of the Board.

Q. And what went into that construction account?

A. In that we deposited a certain amount of fire insurance money that we had received for a building that was destroyed by fire; and, in addition to that, we deposited two bond issues—one for \$175,000.00, and one for \$115,000.00—plus the extras we received in selling the bonds. That is the total amount of money that we deposited of the District's in that fund.

Q. Did that make up your share as required by the contract?

A. That was more than our fifty-five per cent of what we estimated it would cost.

Q. You provided a little more than the required amount?

A. We put a cushion in there.

Q. And what did the Government put in the fund?

A. Why, the Government put in—of course, all the money they gave us they put in—the number of payments. They paid approximately forty-five per cent of the cost of the building, although not quite, because on most of the PWA jobs there were little fines and assessments and penalties in which they didn't participate.

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CROSS EXAMINATION.

Mr. Eckert:

[184] Q. Mr. Evans, the School Board hired some architects. Is that right?

A. Hired an architect.

Q. And the architect prepared the plans for the school. Is that right?

A. The plans and specifications.

Q. And the specifications, as well as the plans. Is that right?

A. Yes.

Q. And the architect then supervised the construc-

tion of the school in accordance with the plans and specifications which he had prepared for the School Board?

A. After the approval of the Department of Public Instruction, and the Art Commission, and the Department of Labor and Industry, and the PWA approved them, they started on the job.

Q. After the plans and specifications had been approved by those various bodies?

A. That is right.

Q. Including the local Bureau for the building permit, and one thing and another. When the construction started, then the architect supervised the construction. Isn't that right?

[185] A. The architect and the clerk we had appointed, who had been a contractor. He assisted the Board—a man by the name of Miller.

Q. The School Board, in addition to hiring an architect to draw the plans and specifications for this new school house, and superintend its construction, also hired a former contractor as a clerk, also to supervise the construction of that school. Is that right?

A. Not supervise; just to check that the building was built according to the plans and specifications. The various contractors supervised their own work. He just checked what they were doing.

Q. That is what this clerk did?

A. Yes; that was his job. He wasn't boss. He was just working in the interest of the Board, to see that we were getting what we were contracting for.

Q. In the interest of the School Board?

A. That is right.

Q. And so was the architect?

A. That is right.

Q. Was this so-called clerk that you hired on the job all the time?

A. Yes, sir.

Q. And was your architect on the job all the time?

A. Well, if he wasn't, he had a draftsman who worked for him, made out the detailed drawings, and he was there all the time—the man who was making out the detailed drawings available for the contractors.

Q. That was an employee—

A. An employee of the architect, a draftsman.

Q. And then the PWA also had an inspector?

A. That is correct.

Q. And he saw, also, that the work was progressing in accordance with the contract. Is that right?

A. That is right.

Q. Was that PWA inspector there all the time or not—do you know?

A. No, I think he had a number of other dockets.

Q. So he could only be there part of the time?

A. His office was there, and from there he migrated to different places—from there he left to work at different other jobs.

Q. So he would only be part of the time on your particular job?

A. That is correct.

[186] Q. The account was in the name of the School District of the Borough of Braddock, and it had some suffix to it. Is that right?

A. That is right—Construction Fund.

Q. Just how would you get the funds from the PWA? Would they come in the form of a check to the order of the School District of the Borough of Braddock?

A. That is right. I don't know just exactly, but they were paid to the Treasurer of the School District of the Borough of Braddock. He deposited it in the account.

Q. The Treasurer of your School Board would deposit that check in this account in the name of the

School District, with the suffix "Construction Account." Is that right?

Mr. Margiotti: This witness knows nothing about that.

Mr. Eckert: You asked him about that.

A. That is right. I saw the checks.

Mr. Margiotti: I didn't ask him anything about deposits.

[187] A. (Continued) I saw the checks. They came in on the same scheme as we get State subsidies from Harrisburg. They come to the Treasurer of the School Board.

Q. You say you saw those checks from the PWA to the Treasurer of the School Board?

A. I think I saw most of them, yes. He is the man who received them. I couldn't tell you just exactly what was written on them, but I know it was practically the same as we use for State subsidies received for the public schools.

Q. So it wasn't a case of the PWA, through its own officials, depositing those checks in this construction account?

Mr. Margiotti: That is objected to as a conclusion. The witness has told you what the check contained.

Mr. Eckert: You assumed something like that in your questions, Mr. Margiotti, and therefore we ought to get it straight on the record.

Mr. Margiotti: I object to it as a conclusion.

(Previous question read by reporter)

Mr. Margiotti: I will withdraw that. Do you mean some PWA man went there and put the money in the bank?

Mr. Eckert: That is right.

Mr. Margiotti: No objection to that.

A. No, he didn't. The Federal Government sent us

the check, and either my secretary or the Treasurer of the Board deposited them.

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RE-DIRECT EXAMINATION.

Mr. Margiotti:

[197] Q. Before payment is made on these final estimates, the Government approves that payment for a particular purpose—

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A. You pay on the I-23s for each contractor.

Mr. Eckert:

Q. And when you say you pay, you mean the School District of the Borough of Braddock?

A. That is correct.

Mr. Margiotti: Well, the School District actually issues the check.

The Court: That has appeared all through this case, that the payment is made by the local agency that is doing the work.

Mr. Eckert: That is right.

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[199] Q. All that we want to establish is that the contractors were paid upon the presentation of these so-called periodical and final estimates to the secretary of the School Board, pursuant to a resolution passed by the School Board of the School District of the Borough of Braddock some time previously. Is that the fact?

A. That is the fact.

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WALTER R. DRIPPS, recalled on behalf of plaintiffs,
testified as follows:

CROSS EXAMINATION.

Mr. Eckert:

[211] Q. Mr. Dripps, isn't it a fact that the Borough of Blawnox hired an architect to prepare the plans for this new municipal building?

A. Yes, sir.

Q. Who was that architect?

A. John H. Phillips, Pittsburgh.

Q. And did Mr. Phillips also prepare the specifications for this new building?

A. Yes, sir.

Q. And did he either personally or through employees of his superintend and supervise the construction of this new building?

Mr. Margiotti: That is objected to, as calling for a conclusion; just what did he do.

The Court: I think that calls for an expression of opinion of this witness, what the architect did, rather than asking him pointblank if he did not supervise the construction and furnish architect's certificates, and so forth. I think you can ask him that—as to the amount of work completed. You can draw out of him anything but an expression of opinion or conclusion of this witness. In other words, you cannot get him to interpret the contract between the Borough and the architect.

Q. Well, have you the contract between the Borough and the architect?

A. No, sir.

Q. Will you get that, please?

A. I think I have that,—I am not sure. I would have to hunt that up.

Q. Will you get that, please?

Mr. Margiotti: If the Court please, these contracts between the contractor and the Borough cover specifically the duties of the architect, just what he does, what the contractor is required to do; there is a special provision in the contract on that, so I think so far as we—

[212] *The Court:* If there is any question about the Borough employing the architect, and so forth, we had better have the contract, if you cannot agree upon that.

Mr. Margiotti: I don't dispute that at all; that is what happens in all these cases. The sponsor employs the architect, and the architect draws the plans, and they are submitted to PWA for approval.

Mr. Eckert: The architect also supervises the construction of the project.

Mr. Margiotti: That is not the fact.

Mr. Eckert: That is the fact.

Mr. Margiotti: I don't agree with you.

Q. Was there a written contract between the Borough and Mr. Phillips, the architect?

A. Yes, sir; some kind of a contract, but I don't know what it was, I don't have that; the attorney took care of that.

Q. Will you please try to get that and bring it in?

A. I will try to get it, yes, sir.

Q. During the construction of this new municipal building, was the architect, Mr. Phillips, or some employee and representative of his there all the time or not?

A. Well, most all the time; I wouldn't say all the time, but most all the time there was someone there.

Q. And just what did the architect or his representative, employee do?

A. Well, they were there to see that the building was constructed according to plans and specifications of the building.

Q. How often would the PWA inspector be there?

A. Every day.

Q. How long each day?

A. I would say on an average of about an hour a day, some days a little longer, some days not quite so long.

Q. Did he also have some other jobs under his inspection, do you know?

A. I understand that he had.

Q. Did he have an office at the Municipal Building?

A. No, sir; his office was in Oakmont, across the river.

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WILLIAM A. ENGLAND, a witness produced on behalf of plaintiffs, having been duly sworn, testified as follows:

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CROSS EXAMINATION.

Mr. Eckert:

[233] Q. Who wrote the checks to pay the contractor?

A. I did.

Q. And did you do that upon presentment to you of those periodical estimates for partial and final payment?

A. After they were properly approved, and also approved by Borough Council, then a voucher was drawn in payment for work done.

[234] Q. Well, those periodical estimates for partial and final payment, then, which collectively comprise Exhibit 167, were finally presented to you for actual payment to the contractor. Is that right?

A. They were.

Q. Would the Borough Council pass a resolution authorizing each payment to the contractor, Mr. England?

A. Not a resolution; motion by Council.

Q. But there was a separate motion by the Borough Council directing each payment to be made to the contractor. Is that right?

A. There was.

Q. Are those motions noted in that history of the building that you produced?

A. They are.

Q. You also said that contract was awarded to the Diamond Electric Company. Do you mean awarded by the Borough Council?

A. By Borough Council, yes.

Q. Were there any extras to the electrical work over and above what was called for by the contract?

A. There was.

Q. That is, I mean on this new Municipal Building.

A. There was some extra work done by the electrical contractor that was not included in the original contract.

Q. And you said the amount of the grant was \$31,500.00?

A. \$31,500.00.

Q. Was the amount of that grant increased on account of those extras to the electrical work?

A. It was not.

Q. What was the total cost of the building?

A. The four contracts?

Q. Yes, all the work.

A. \$74,749.00.

Q. How often would the PWA inspector be at this new building during its construction, Mr. England?

A. Well, he would be there three or four times a week. Some days he wouldn't spend much time there, but he was there very often as a majority.

Q. Well, you would say about three or four times a week?

A. Yes.

Q. Some days he wouldn't be there at all, then. Is that right?

A. That is true.

[235] Q. Did he have other projects under his supervision, also?

A. Well, I am not certain, but I believe he had.

Q. Were the architects, Schoepeman and Carter, hired by the Borough?

A. They were.

Q. In addition to the architects on that job, did the Borough hire anyone else in connection with the construction of that building?

A. Just what do you mean by that?

Q. I mean, in addition to the architects, did the Borough have any other representative present during the construction of the building?

A. Oh, yes; the Borough had an inspector.

Q. You mean a man hired by the Borough?

A. Hired by the Borough, but not paid for out of this fund.

Q. What kind of a man was he?

A. Well, he had been in the general contracting business.

Q. And was he there all the time?

A. He was there from March until September.

Q. Of what year?

A. 1938.

Q. All the time?

A. All the time.

[238] Q. Mr. England, was the bank account that you referred to before in the name of the Borough of Crafton?

A. The Borough of Crafton, Municipal Building Construction Account.

RE-DIRECT EXAMINATION.

Mr. Margiotti:

Q. Now, Mr. England, in obtaining Government grant for this construction, who made the initial move? Was the initial move made by the Borough or by the Government?

A. The initial move was made by the Borough, through its Committee.

Q. In other words, you first decided to put up this building?

A. That is right.

Q. Then you made a request of PWA for a grant?

A. That is right.

Q. And upon that request came the offer?

A. That is right.

Q. And that was followed by the acceptance?

A. That is correct.

Q. By the way, did the inspector, the resident engineer or resident inspector of PWA, have a room or quarters on the job?

A. There was a room, or part of a room, prepared for him, but he never used it.

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RE-CROSS EXAMINATION.

Mr. Eckert:

[242] **Q.** Mr. England, was the offer from the PWA of a grant received by the Borough and was that offer accepted before the Borough even advertised for bids from contractors?

A. It was accepted.

Q. Before the Borough even advertised for bids? Is that right?

A. That is right.

Q. Consequently, the offer from the PWA of the grant of \$31,500.00 was received and accepted by the Borough before you ever entered into any contract with

the Diamond Electric Company or Mr. Leeke. Isn't that right?

A. That is right.

Q. Was the amount of the grant from the PWA increased or decreased any because of the amount of the contract for the electrical work with the Diamond Electric Company?

A. No, it was not.

Q. You referred to a committee. What committee was that that you referred to?

A. A committee known as the Building Committee appointed by the President of Council, and comprised of four men, members of Council.

Q. And what was the function of that committee?

A. The function of that committee was to be— at least one member of the committee to be on the site each day to see how the work was progressing, in addition to the inspector that the Borough Council had employed.

Q. You mean, that Committee of Council was in contact and in charge of the actual work?

A. It was.

[243] *Mr. Margiotti*: That is objected to as calling for a conclusion, and we ask that be stricken out. The committee could not have been in charge of the actual work.

The Court: You can only get testimony from this witness as to what the committee did on the job.

Mr. Margiotti: I don't object to that, but I certainly object to the conclusion.

The Court: The objection, in so far as it related to the answer stating what the function of the committee man was, is sustained, and the answer stricken.

Q. Tell us what the committee did:

A. The members of the committee would see what had been done during the day, and if there were any changes to be made, the committee would take it under advisement; later on that committee would report to Council, and Council would act upon the suggested changes.

Q. When you said "during the day", do you mean members of that committee, or one of them at least, would be at the site of the work during the daytime?

A. Yes. I know one member of the committee who spent almost the entire day, because his business was so located that it was just a few feet from his location to the location of the new building.

Q. You mean, he did that just on one day?

A. Oh, no. He was there every day.

Q. In this letter marked Exhibit 168, there is a reference at the bottom to Mr. Vincent Schoeneman. Who is he? Do you know?

A. Mr. Schoeneman is an architect.

Q. Was he one of the firm of architects that the Borough hired?

A. He was one of the two selected by the Borough, a resident of Crafton Borough.

Q. Are those the architects who prepared the plans and specifications?

A. They did.

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MRS. LENA Z. KENNEY resumes the stand.

CROSS EXAMINATION.

Mr. Eckert:

[254] Q. Mrs. Kenney, in whose name were these two bank accounts that you referred to on direct examination?

A. The School District of the Township of Mount Lebanon.

Q. And were those accounts subject to check only by the School District of the Township of Mt. Lebanon?

A. Yes.

Q. And the checks were written by you as secretary of the School District. Is that right?

A. Yes.

Q. And you wrote those checks upon presentment to you of these periodical estimates for partial and final payment, which collectively on the one school are known as Exhibit 178, and on the other school as Exhibit 179. Is that right?

A. I did.

Q. That is right, is it.

A. Yes; after motion by the Board.

Q. That is, the School Board of the Township of Mount Lebanon?

A. Yes; they approved it.

[255] Q. Did the School District of the Township of Mount Lebanon also receive loans from the PWA on account of these two schools or did you sell the bonds to someone other than the PWA?

A. We did not receive the loan; we sold the bonds to other parties.

Q. Not to the PWA?

A. Not to the PWA.

Q. That applies to both schools?

A. Both schools.

Q. I notice that the periodical estimates for partial payment on the Lincoln School are signed by Ingham & Boyd, architects.

A. They are.

Q. The one I am looking at by "Charles P. Ingham, partner". What connection did they have with the Lincoln School work, Mrs. Kenney?

A. Architects employed by the Board.

Q. By the Board of Education of the School District of the Township of Mount Lebanon?

A. They were.

Q. Were those architects on that job constantly during its construction?

A. The architect or someone employed by him inspected—they were additions, and I don't know—they weren't there all the time, but they were there frequently.

Q. Well, either the architect or some employee of theirs was there constantly throughout the work. Is that right?

A. Yes, some employee.

Q. Was the PWA inspector there all the time or not?

A. He was there frequently, but I don't know how often he was there.

Q. Well, was he there constantly?

A. No.

Q. He would be there off and on?

A. Off and on.

Q. And does the same apply also to the Markham School?

A. The same.

Q. Did the School Board of the School District of the Township of Mount Lebanon also employ Ingham & Boyd to prepare the plans and specifications and superintend the alterations of the Markham School?

A. They did.

[256] Q. I say, was the offer from the PWA received and accepted before you advertised for bids?

A. Yes.

[257] Q. And, of course, therefore the offer from the PWA was received and accepted by the School Board before it entered into any contract with Mr. Ross on the Lincoln School and Mr. Stauffer on the Markham School. Is that right?

Mr. Reich: That is objected to, as calling for a conclusion on the part of the witness; the records speak for themselves.

Mr. Eckert: It is a question of fact as to the order of time.

Q. (Question read).

A. The offer, yes.

Q. That is, the offer from the PWA was received by the School Board and accepted by it before the School Board entered into the contract with Mr. Ross on the Lincoln School or with Mr. Stauffer on the Markham School?

A. Yes.

Q. Was the amount which you received from the PWA on either one of these schools affected or changed by reason of the amount of the contract between the School Board and Mr. Ross on the Lincoln School or Mr. Stauffer on the Markham School?

Mr. Reich: That is objected to, as definitely calling for a conclusion on the part of the witness.

Mr. Eckert: I am asking her if there was any change in the amount of the grant.

Mr. Reich: You asked her opinion, whether it was affected by the change.

The Court: You can ask her if there was any change, any enlargement in the amount of the grant, by reason of changes in the plans, in the work done.

Q. Mrs. Kenney, was there any change in the amount of the grant from the PWA on account of either one of these schools by reason of the amount of the contract with Mr. Ross on the Lincoln School or Mr. Stauffer on the Markham School?

A. As I remember, there was not.

Q. In each case you received exactly the amount of grant which had been offered and accepted before you even advertised for bids. Isn't that right?

A. As I remember, yes.

Q. Well, that is very easily checked. The amount of the offer on the Lincoln School via of a grant was \$13,909. Is that right?

A. Yes, \$13,909.

Q. And was that the exact amount that you received from the PWA on that?

A. Yes.

[258] Q. And on the Markham School was the amount of the grant contained in the offer \$21,273?

A. Yes.

Q. And was that the exact amount received?

A. Yes, it is the exact amount I have.

Mr. Strassburger:

Q. In other words, Mrs. Kenney, the maximum which you received from the Government on either of these jobs was fixed, no matter what the price of the building was?

A. Yes, unless we made a request and went through—

Q. And you did not get forty-five per cent on either of these jobs, did you?

A. Yes, we did get forty-five per cent. There is a difference here because we added more to our amount—I mean the School District's amount.

Q. Then you didn't get forty-five per cent of the total cost.

Mr. Reich:

Q. You got forty-five per cent of what you originally asked for?

A. Yes, we got forty-five per cent of what we originally asked for.

Mr. Strassburger:

Q. But you didn't get forty-five per cent of the cost of the building in either case?

A. No, not as completed.

HENRY WADKOWSKI, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Reich:

[264] Q. Was the electrical work finished on this project, Mr. Wadkowski?

[265] A. Yes, sir, it was.

Q. State whether or not it was paid for.

A. Yes, sir.

Q. In full?

A. Yes, sir.

Q. By the Borough of Braddock?

A. Yes, sir.

[267] Q. Did the Borough of Braddock receive the money from the PWA, in accordance with its offer and acceptance?

A. Yes, sir, it did.

Q. And what did the Borough of Braddock do with the money it received from the PWA?

A. It was deposited in a special fund, which was marked "Waterworks Improvement Account, 1937".

Q. The balance of the money for the building of this filtration plant was raised by what method?

A. By the sale of bonds, Councilmanic bonds.

Q. And what became of the proceeds of the sale of those bonds? What was done with them?

A. It was also deposited in the construction fund.

Q. It was also deposited in the same account?

A. Yes, sir.

Q. Have you amongst your records Form No. 81, termed weekly payroll sheets?

[268] A. Not to my knowledge, sir.

Q. Did you ever have?

A. I never saw them.

CROSS EXAMINATION.

Mr. Eckert:

Q. This bank account that you referred to, Mr. Wadkowski, was in the name of the Borough of Braddock, was it?

A. Yes, sir, it was.

Q. And to identify it from your other accounts, you called it Water Works Improvement Account, 1937. Is that right?

A. That is right, sir.

Q. Was 1937 the year in which you opened that account?

A. Yes, sir.

Q. Was that account subject to check only by the Borough of Braddock? Could anybody else check on that account?

A. No, sir.

Q. Who wrote the checks on that account?

A. I did.

Q. And did you write those checks to pay the contractors upon receipt of the estimates for partial payment, collectively identified as Exhibit 189?

A. Yes, sir, I did.

Q. Who were The Chester Engineers?

A. The Chester Engineers were the engineers who

made the plans and looked out after the interests of the Borough during the construction of the filtration plant.

Q. You say they are a firm of consulting engineers. Is that right?

A. That is right.

Q. By whom were they hired in connection with this project?

A. By the Borough of Braddock.

Q. And you say they were to look after the interests of the Borough in connection with the construction of this water works?

A. Yes, sir.

Q. In addition to drawing the plans for this water works, what else did The Chester Engineers do in connection with this new filtration plant?

A. Well, they more or less looked to the Borough's interest as the work was progressing on.

[269] Q. Were they there during the construction of the work?

A. Yes, they were. I don't believe they were there all the time. If there was a matter came up, our Superintendent of Public Works would get in touch with The Chester Engineers and their man would be out, if a problem had arisen during the construction.

Q. Did the Borough have an engineer of its own on this job?

A. Well, our Superintendent of Public Works, Mr. G. M. Dillon, is also an engineer, and he looked out after the Borough's interests.

Q. Did he also devote his attention to this water works job?

A. Yes, sir, he did.

Q. That is Mr. G. M. Dillon?

A. That is right.

Q. I notice on these periodical estimates for partial payment, collectively marked Exhibit 189, there is a

stamp which says "Approved for Payment, Water Committee", signed by three men. What does that mean?

A. That means that was approved by the Water Committee, councilmen on that particular committee, who O. K. the bills for payment; and Mr. Dillon, being the superintendent, he O. K.'s it, also.

Q. The Water Committee was a committee appointed by the Borough Council of the Borough of Braddock. Is that right?

A. That is right.

Q. And would these forms collectively marked Exhibit 189 be presented to you for payment to the contractors?

A. Yes, sir, after the signatures were on there.

Q. The actual payment was made by you upon presentment to you of these periodical estimates marked Exhibit 189. Is that right?

A. Yes, sir.

Q. Was the PWA inspector on this job all the time, or would he only be there from time to time?

A. He was there only from time to time.

Q. Did he have his office on this job or somewhere else?

A. He did not have his office in Braddock at the time.

Q. You say he did not?

A. No, sir.

Q. Did he have other jobs under his inspection, too, do you know?

A. As I recall, he did.

Q. What was the amount that you actually received from the PWA?

A. \$98,931, sir.

[270] Q. That was the exact amount of the grant specified in the offer?

A. Yes, sir.

Q. The amount of that grant, then, was not in-

creased on account of the extras to the electrical work over and above what was specified in the original contract between the Borough and the Ross Electric Company. Is that right?

A. No, sir.

Q. Is that right?

A. That is right.

Q. Do you know the total cost of this new filtration plant?

A. Not exactly, sir.

Q. Approximately?

A. It is approximately \$223,000.

Q. Was that offer of a grant from the PWA—

A. Pardon me—can I interrupt, sir? I believe the approximate cost was \$243,000.

Q. Was that offer of a grant from the PWA received and accepted by the Borough of Braddock before it advertised for bids for the electrical and the other work necessary in order to construct this new water works?

A. Yes, sir.

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E. J. WALDMAN, JR. resumes the stand.

DIRECT EXAMINATION (Cont'd.).

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Mr. Reich:

[282] Q. Did I understand you to say that you have a Township engineer?

A. That is right.

Q. And he employed the services of a consultant?

A. A consultant.

Q. Chester Engineering Company?

A. That is correct.

Q. Was a contract entered into between the Town-

ship and the Chester Engineering Company? Was there a written contract—do you know?

A. There was a contract between the Township and F. G. Ross, and in that contract it was mentioned that The Chester Engineers were acting as consultants, but we had no direct contract with Chester.

Q. Who is Mr. Ross?

A. Mr. Ross is the Township Engineer.

Q. You say now that the Township entered into a contract with its own engineer in reference to his services for this project?

A. That is correct.

Q. And was that contract in writing?

A. It was.

Q. Have you that contract with you?

[283] A. No, sir.

Q. Will you produce it?

A. I will be glad to.

CROSS EXAMINATION.

Mr. Eckert:

Q. Was Mr. Ross at this new Water Works every day?

A. To my knowledge, Mr. Ross inspected the work at the new pumping station several times a week. I couldn't say he was there every day, but he was there many times throughout the week. Possibly he would be there three or four times in one day.

Q. Just what was Mr. Ross' connection with that job?

A. Mr. Ross was the supervising engineer on this whole project, and as such he had supervision over this contract, which is part of this PWA docket.

Q. You mean, he had charge not only over the electrical contract, but also the contract for the heating, the plumbing, and the general construction?

A. That is correct.

Q. Did the Township hire anybody else besides Mr. Ross in connection with this new water softening station?

A. Yes, the Township hired an inspector.

Q. And how much of the time was he on the job?

A. He was on the job all the time. He was on the job all the while that there was any work going on by any of the contractors.

Q. Would he be there eight hours a day?

A. Yes, sir.

Q. Every day?

A. Every day.

Q. How often would the PWA inspector be there?

A. The PWA inspector would be there, to my knowledge, also several times during the week. It would be pretty hard to say just how often he was there, but he kept in very close contact with the whole job.

Q. Did he have other jobs under his inspection, also?

A. I understood that he had.

Mr. Reich: I ask that the Court strike that answer from the record, because the witness definitely has stated he doesn't know from his own knowledge, except he understood.

The Court: We decline to strike.

[284] Q. This bank account was in the name of the Township, was it?

A. It was.

Q. And subject to check only by the Township?

A. By the Township of Shaler, yes, sir.

Q. And only by it?

A. And only by the Township of Shaler.

Q. These periodical estimates for partial and final payment were presented to you for payment? Is that it?

A. Yes, sir.

Q. And was there a resolution passed by the Township Commissioners directing the payment of each of those estimates?

A. Yes.

Q. And whose signature is this?

A. Signature of F. G. Ross, Supervising Engineer.

Q. Mr. Ross' title, then in connection with this project was supervising engineer. Is that right?

[285] A. That is correct.

Q. Your bank account didn't have "PWA" on it, did it?

A. No, sir.

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CHARLES E. HAAG, a witness produced on behalf of plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

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Mr. Reich:

[290] Q. Now, after you received those partial estimates that you have identified here, what did you do toward payment? How did you pay it?

A. The partial payments were made by check by the School District to the contractors.

Q. Did you have any vouchers?

A. No.

Q. Have you the checks here?

A. Yes, sir.

Q. Will you produce them?

A. (Witness produces checks, which were there-upon marked Plaintiffs' Exhibit No. 213)

Q. Mr. Haag, I show you Plaintiffs' Exhibit 213, and ask you what they are.

A. These are checks issued by the School District

covering payments to the electrical contractor, John W. Craig.

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CROSS EXAMINATION.

Mr. Eckert:

[291] Q. Mr. Haag, Exhibit 213 consists of the several checks that were issued by the School District of the Township of Kennedy to John W. Craig Electric Company in payment for the electrical work on this new Kenmar School. Is that right?

A. That is right.

Q. Were those checks written by the Secretary of the School Board upon presentment to him of the periodical estimates for partial and final payment, collectively marked Exhibit 210?

A. They were.

Q. This bank account was in the name of the School District of the Township of Kennedy, and had written after it "Charge to Construction Fund." Is that right?

A. It was designated as Construction Fund.

Q. But in the name of the School District of the Township of Kennedy,—

A. That is right.

Q.—Construction Fund. Is that the way it is?

A. That is right.

Q. There was no "PWA" or any docket number on that account?

A. No.

Q. Is that right?

A. That is right.

Q. How much of the time was Mr. Phillips, your architect, on this job?

Mr. Reich: If you know.

A. As near as I can tell, he spent the most of his time on the job.

Q. Did the School District employ anyone besides an architect in connection with this job?

[292] A. They did.

Q. Who was that?

A. We had a man employed as our representative inspector.

Q. How much of the time was he there?

A. He was there all the time.

Q. What did the architect do on the job?

A. The architect's duties were to supervise the construction of this addition to the school building.

Q. How much of the time was the PWA inspector there?

Mr. Reich: If you know.

A. He spent, I would say, from half an hour to possibly two hours a day; possibly more. He had other jobs he was working on—other projects.

Q. Did the architect also prepare the plans and specifications that you have produced?

A. He did.

Q. Was that account in the bank subject to check only by the School District of the Township of Kennedy?

A. It was; that is right.

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JOHN J. BRUCE, a witness produced on behalf of plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

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Mr. Reich:

[295] Q. Did the Snowden Township receive the grant from the Government for erection of the school?

A. It did.

Q. And what was done with the money?

A. The money was deposited in a separate fund, called the Construction Fund.

[296] Q. And what other moneys were placed in that fund?

A. The moneys from the sale of bonds to help to pay off the building and other necessary funds to complete the cost of the building, which were drawn from our general fund.

Q. Were those bonds purchased by the Government or by private bidders?

A. Private bidders.

Q. Now, after you received those partial estimates, what did you do?

A. They were presented to the Board for approval for payment.

Q. And were they approved and paid for?

A. They were.

Q. By voucher or check?

A. By check.

Q. Have you the checks with you?

A. I have. (Witness produces cancelled checks.)

Q. Were all the moneys due to the electrical contractor paid to him?

A. They were.

(Cancelled checks marked Plaintiffs' Exhibit No. 220)

Q. I show you Plaintiffs' Exhibit 220, and ask you what they are.

A. They are checks made payable to the H. D. Hale Electric Company.

Q. In payment of the partial estimates that you have testified to—that you have identified?

A. That is right.

Q. Were any moneys expended by the School Board out of this construction account for any other purpose except the construction of that school for which the Township received the grant?

A. None.

Q. Did you have a contract between the Township and any architect or any engineer?

A. We did.

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CROSS EXAMINATION.

Mr. Eckert:

[298] Q. Mr. Bruce, the checks by which the contractor, the H. D. Hale Electric Company, was paid, which checks are marked collectively Exhibit 220, were written by you. Is that right?

A. That is right.

Q. As secretary of the School Board of Snowden Township. Is that right?

A. That is right.

Q. And you wrote those checks upon presentment of the periodical estimates for partial and final payment to the School Board. Is that right?

A. That is right.

Q. And those periodical estimates are marked as Exhibit 219. Is that right?

A. That is right.

Q. In whose name was that bank account?

A. Snowden Township School District.

Q. And was that all?

A. Building Fund.

Q. Snowden Township School District Building Fund. Is that it?

A. That is right.

Q. There was no "PWA" or any docket number in the name of that account?

A. There was not.

Q. And on your checks there was no "PWA" or any docket number? Is that right?

A. There is not.

Q. That account was subject to check only by the Snowden Township School District?

A. That is right.

Q. Mr. Bruce, on one of these periodical estimates there is written in ink, "To the Owner. Liquidated damages have accrued. You may consider assessing of same when making payment." Who wrote that on there?

A. R. B. Blackburn.

Q. Who was he?

A. He was the resident engineer for the PWA.

[299] Q. What did the School District do about that notation, if anything?

A. They didn't do anything about it.

Q. They paid the contractor anyhow. Is that it?

A. That is right. All the contracts were delayed, and they waived any claim against any of them.

Q. What connection did Press C. Dowler have with this work?

A. He was the architect.

Q. And what did he do in connection with this job?

A. He made up the plans and specifications, and supervised the construction.

Q. And, in addition to Mr. Dowler, did the School Board employ anybody else in connection with this job to protect its interests?

A. Only the Clerk of Works, John Simsic.

Q. How much of the time did Mr. Simsic spend on this job?

Mr. Reich: If you know, Mr. Bruce.

A. Well, every day that job worked, presumably.

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RE-CROSS EXAMINATION.

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Mr. Strassburger:

[300] Q. Mr. Bruce, the original estimate was \$52,000.00, in round figures. Is that right?

A. I believe that is right.

Q. And you spent \$62,000.00?

A. That is right.

Q. And the grant of the Government was based upon the original estimate of \$52,000.00?

A. That is right.

Q. You got about \$23,000.00?

A. \$23,727.00.

Q. So that when the building cost you \$10,000.00 more, you got no further funds from the Government?

[301] A. We did not.

THOMAS HARTLAND, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

CROSS EXAMINATION.

Mr. Strassburger:

[310] Q. Mr. Hartland, under whose supervision was the Homeville School built?

A. The PWA had what is known as a resident engineer on the school, and then the School District had their own inspector.

Q. And whom did the architects, Lamont Button and Paul F. McLean, represent?

A. They represented the School District.

Q. How much of the time were they on the job—they or their representatives?

A. I couldn't just state the amount of time that they were on the job.

Q. Separate contracts were made with the general contractor and with the mechanical contractors. Is that correct?

A. That is correct.

Q. So someone had to coordinate the work. Who did that?

Mr. Margiotti: You mean what work?

Mr. Strassburger: Work on the high school.

Mr. Margiotti: That is objected to, because the contract speaks for itself.

The Court: I take it this question is directed to the physical conditions on the ground.

Mr. Strassburger: That is correct, Your Honor.

The Court: As to the supervisors that were there and who actually gave directions?

Mr. Margiotti: All right,—if you know, Mr. Hartland.

A. Why, the architect, he was—I would say—the general supervisor; and the School District's inspector functioned directly under him.

Q. Did you have an inspector besides that, of your own?

A. Yes, sir.

[311] Q. Who was he?

A. On the—

Q. Just the Homeville School.

A. That was Edward Dorsey Van Sickle—V-a-n S-i-c-k-l-e.

Q. Did he spend a hundred per cent of his time there?

A. Yes.

Q. And he represented the School District?

A. Yes.

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Mr. Eckert:

[312] Q. Mr. Hartland, nobody could check on that bank account that you refer to except the School District. Is that right?

A. That is right.

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Q. Who signed the checks by which money was withdrawn from the bank account to which you have referred?

A. The President of the Board of School Directors, the secretary and the treasurer.

Q. You mean the secretary and treasurer of the School Board, of the School District?

A. Of the School District.

[313] Q. Who actually wrote the checks in payment to the electrical contractor and the other contractors, too, Mr. Hartland?

Mr. Margiotti: We will admit it was the School District that actually wrote the checks, and they actually signed them. In every case we will admit it was the sponsor that did that.

Mr. Eckert: And that the sponsor did that upon presentment to it of the periodical estimates for partial and final payment. Is that right?

[314] Mr. Margiotti: That is part of it; that occurred in each case, but that is not all.

Q. Mr. Hartland, was it to the School District that the partial and final estimates were presented for payment, and did you then write the checks in accordance with those estimates?

A. Yes.

Q. Do you know, Mr. Hartland, the total cost of constructing the three schools that you referred to?

Mr. Margiotti: That is objected to, because I have been confined to one school.

Mr. Eckert: But when it comes to the total grant, it was for all three schools, and I think therefore we have to get the total cost.

Mr. Margiotti: I don't think it is material, if the other two schools are not in it.

The Court: Well, do the offer and acceptance specify the amount for each school?

Mr. Eckert: No they do not, Your Honor; it is a lump sum for all three schools.

Mr. Margiotti:

Q. It covers the whole thing— isn't that right?

A. The offer was a lump sum for all three schools.

The Court: It seems to be a percentage and not an amount in dollars and cents mentioned in the offer.

Mr. Strassburger: It is the same form as the others. It is a percentage, and then says it shall not exceed three hundred fifty-eight thousand dollars, or something like that—the one I looked at read that way.

The Court: It doesn't seem that the total amount is of any importance if the amount under the contract was properly proportioned; it is only in case the amount of the contract were more than the amount specified that the total would be of any evidential importance. We sustain the objection.

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HOWARD H. McCLOSKEY, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

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CROSS EXAMINATION.

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Mr. Eckert:

[323] Q. Mr. McCloskey, to whom were these Forms I-23, entitled "Periodical Estimates for Partial and Final Payment", presented for payment?

A. By whom?

Q. I say, to whom were they presented for payment?

A. I received them.

Q. As secretary of the School Board?

[324] A. That is correct.

Q. Please tell us what you did with reference to the payment of these estimates, marked collectively Exhibit 229?

A. We drew the check, had it signed by the president and the secretary of the School Board, and then we mailed it or delivered it to the payee.

Q. And when you say "we" you mean the School District of—

A. Versailles Township.

Q. (Continuing)—of Versailles Township.

A. That is correct.

Q. And did you do that upon receiving these periodical estimates for partial and final payment, marked Exhibit 229?

A. When they were rechecked to see that we agreed with those totals.

Q. By whom was the architect, Mr. Moffitt, hired?

A. By the School District of Versailles Township.

HARRY G. CANNING, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

[341] *The Court*: Well, apparently there is no dispute here over the fact that the contract was made by resolution of the School Board; and from what both of you have said, I think that admission can go on the record. Is that agreed to?

Mr. Strassburger: That is right, that is agreed to.

Mr. Margiotti: Fine.

Mr. Margiotti:

[344] Q. Will you state whether or not there was a bank account opened for this construction?

A. There was.

Q. Where was it opened?

A. Mellon National Bank.

Q. And in what name?

A. School District of Borough of West View Building Account.

Q. What funds went into the building account?

A. Well, the U. S. grant—that was forty-five per cent of the amount—and School District funds of fifty-five per cent.

Q. And were these estimates paid out of that fund?

A. They were.

Q. Will you state, Mr. Canning, when was the money actually received from the Government, before or after the contract was signed by the contractor?

A. It was received after the contract was signed.

Q. Did the PWA have anything to do with the bank account?

A. Nothing outside of an audit several times during the period of construction.

Q. Did you pay any amounts out of that bank account except on these estimates?

A. No.

CROSS EXAMINATION.

Mr. Strassburger:

Q. Mr. Canning, these pink papers that are attached to Exhibit 245, those are not checks, are they, in the ordinary sense? They are bills of exchange drawn on the treasurer?

A. Drawn on the treasurer, that is right.

[345] Q. Accepted by the treasurer of the School District?

A. His signature is required.

Q. And payable at the Mellon National Bank?

A. That is right.

Q. In other words, they are not drawn on the account at all; they are drawn on the treasurer. Is that right? They are addressed—

A. Yes, they are addressed to Mr. Young.

Mr. Margiotti: Don't they speak for themselves?

Mr. Strassburger: I want to call attention to the difference.

Q. They are accepted by the treasurer?

A. That is right.

Q. Now, these other forms called periodical estimates for partial payment, they were presented to you, and on the faith of those you issued these warrants or drafts. Is that right?

A. The estimates were presented to me, and I presented them to the Board for approval. Each month they were approved as they were presented to me.

Q. In other words, you had a resolution each month for the payment—

A. Well, it wasn't just a resolution, it was a motion of approval by the Board.

Q. A motion of the School Board?

A. Yes, sir.

[346] Q. Who supervised the erection of the additions and alterations of the high school?

A. Well, the architect had full charge, and there was a clerk of the works that was on the job that was under his instructions.

Q. Who hired the "clerk of the works"?

A. The architect.

Q. Was he on the job all the time?

A. Yes, sir.

Q. I notice Mr. Margiotti called your attention to certain change orders which were not approved in the

first instance by the PWA. Did you pay those before you had approval by the PWA?

A. Well, there may have been part of it paid as the estimate came in. We were responsible and had authorized the work. They were sent in to PWA for approval, but had not come through yet.

Q. You say you paid some of those, notwithstanding the approval had not come through?

A. That is right; that is, whatever was in on the estimate at that time.

Q. In other words, you have paid this estimate just as it appeared here, in those two or three instances, notwithstanding the fact the approval had not yet come through from the PWA?

A. Yes, sir; because the work had been authorized through the Board and it was necessary.

Q. How was the account in the Mellon National Bank carried—the name of it?

A. Building account.

Q. Well, not just "building account"?

A. Well, School District of the Borough of West View.

Q. When you refer to "the Board", you mean the School Board of West View?

A. School Board of West View, yes, sir.

JOHN F. LABOON, recalled on behalf of plaintiffs, testified as follows:

CROSS EXAMINATION:

Mr. Strassburger:

[352] Q. In other words, there was no grant made by the PWA particularly for electrical work as such?

[353] A. That is correct, excepting the Government, of Course, in making its contribution would not make a

contribution to any part of the work; it made it as a whole; the project had to be complete in every respect before it would make any agreement as to the grant.

Q. And as to all of these jobs, who supervised the construction of them?

[354] A. The County.

Mr. Margiotti:

Q. Through the architect?

A. Either through the architect or the Works Department, which ever one was in authority.

Q. And whatever it was, you made your arrangement with PWA on supervision?

A. Well, I don't know whether I understand your question, Mr. Margiotti.

Q. What I mean is this: You see, we have already the contract between the Government and the County—that is the offer and the acceptance, and it refers to provisions and so forth, particularly 230, Form 230—You know what that is, don't you?

A. Yes, I have seen it.

Q. Well, that provides for supervision.

A. That provides for the owner or sponsor providing full supervision.

Q. That is right. You carried out the provisions of your contract?

A. Yes, that is right. We had to supervise it, and we would do it in any case, as a matter of duty to taxpayers.

Mr. Strassburger:

[355] Q. Well, take as an example the Municipal Airport. How was that construction work done?

A. All contracts, all County Contracts, are done under the direction and supervision of the Department of Public Works, or the Department of Works, whichever the case may be. For instance, my title indicates—

and I have always in my practice formerly as consulting engineer—we always assume the direction as well as the supervision of a job. May I illustrate this point more clearly? For instance, on Seventh Avenue-Bigelow Boulevard we are starting an overhead construction job which is now in its second week of construction. In that particular instance I directed the contractor not to shut down the boulevard and to fly wild on the north side, so as to keep traffic open until after Christmas. That is a matter of operation. Yet we also have the other phase, of supervision and inspection. That might cover materials, and also the method of construction and the character of the work being done by the contractor. There is a distinction there, for instance, between the supervision that may be given by PWA. The PWA would have nothing to do with the direction of the job; I would have that job, with my subordinates. But they would have their own form of inspection, to be sure that the Government was not cheated out of anything that the contractor might attempt to do contrary to the contract. They saw to it that the contract was fulfilled in every respect; but that was from inspection. But the direction was entirely under me; and we often had conflict between the PWA and myself personally, because PWA at times tried to direct the work beyond their authority, which was after all my responsibility. So have I made it clear just what is meant?

Q. You have made it very clear. That is, what you said as an example about Seventh Avenue I assume applies to these seven jobs that we have in evidence here?

A. Yes, sir, in every respect.

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WILLIAM T. NORTON, a witness produced on behalf of the plaintiffs, having been duly sworn, testified as follows:

CROSS EXAMINATION.

Mr. Strassburger:

[365] Q. Mr. Norton, I notice these warrants contain a notation on the back of each stating that there was a resolution of the Board, and the date of the resolution.

A. Yes, sir.

Q. You had a resolution then of the School Board of the City of McKeesport for each check that you drew to Schindler, the electrical contractor?

A. Yes, sir.

[366] Q. When you paid out on these partial estimates, who submitted you the estimates? I refer to these—

A. I-23s?

Q. Yes.

A. They come from the owner's representative; they are handed in by the various contractors, approved by the architect and the regional engineer, and then they come to my office for payment, and they are presented to the Board.

[367] Q. And then the Board would pass a resolution and you would pay it?

A. That is right.

Q. When you talk about the "owner", whom do you mean?

A. The School District.

Q. Were there any changes in the electrical work?

A. No, sir.

Q. When you made these checks to pay these particular estimates for partial payment, did you always have the forty-five per cent from the Government in hand?

A. No, sir.

Mr. Strassburger:

[368] Q. Mr. Norton, who actually directed the work?

A. The architect.

Q. And who was the architect?

A. C. R. Moffitt.

Q. Was there a clerk of the works?

A. There was a clerk of works also.

Q. Who furnished the clerk of the works—did you or the architect?

A. The School District.

[369] Q. And paid him?

A. Yes, sir.

Q. You paid him?

A. The School District paid him.

Q. Was there a PWA inspector on the job also?

A. Yes, they had an inspector.

Q. What did he do?

A. Well, he came on the premises at various times to look over the work and see that it was executed in accordance with the requirements of the Public Works Administration.

Q. Was he there all the time?

A. Well, I wasn't on the job. He only came at times, I understand.

Q. Was the clerk of the works on full time?

A. Yes, sir.

Q. Was the architect or his representative there full time?

A. Well, he was supposed to be, and I think he was.

Q. If you know, did the PWA inspector have other jobs to inspect?

A. They so informed me.

THOMAS HARTLAND, recalled on behalf of plaintiffs,
testified as follows:

CROSS EXAMINATION.

Mr. Strassburger:

[374] Q. Who drew these checks?

A. The secretary of the Board.

Q. That is you?

A. Yes, sir.

Q. And they were signed by officers of the School District?

A. Signed by the secretary and the president and treasurer of the School District.

Q. Could anybody else draw on this account in the Monongahela Trust Company, Homestead?

A. No other person.

[375] Q. And you drew these checks after you received the periodical estimates for partial payments?

A. Yes, sir.

Q. And following each one except the final one you made a check?

A. Yes, sir.

Q. And on the final one you had a check made out and then cancelled it?

A. Yes, sir.

Q. And that final one was exactly ten per cent of the amount of the contract. Is that right?

A. Exactly ten per cent of the amount of the contract.

Q. Were the previous checks each authorized by resolution of the Board?

A. Authorized by motion, the same thing.

Q. In each instance?

A. Yes, sir.

Q. That is the School Board I am talking about.

A. Yes, sir.

G. L. CRAIG, one of the defendants, produced on behalf of plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

[392] *The Court:* The witness does not have to testify to anything.

Mr. Margiotti:

[393] Q. Do you have any record, either from the sponsor or from PWA, showing the completion of the job or the acceptance of it?

A. Yes, I have a record from the sponsor.

Q. Where is that record?

A. Well, I don't think I have it with me, but I can get it. They approved and accepted the job.

WALTER R. DRIPPS, recalled for further cross examination testified as follows:

CROSS EXAMINATION.

Mr. Eckert:

[397] Q. When the periodical estimates for partial and final payment were presented to you, as secretary of the Borough of Blawnox, was there a motion of Council passed directing them to be paid or not?

Mr. Margiotti: If there was a motion, of course the motion is the best evidence.

Mr. Eckert: That is what we had the minute book here for, but it isn't here now.

A. Most of them were, but I was authorized by the Borough Council to pay those estimates after approval by Mr. Phillips, the architect for the Borough,

and the resident engineer for PWA. Most of them were ordered paid by resolution, but it wasn't necessary.

Q. Resolution of the Borough Council?

A. Yes, sir.

Q. And was there a resolution of the Borough Council passed at the completion of the work, accepting the building?

A. Yes, sir.

Mr. Margiotti: * * * At each of the regular monthly meetings of the Board of Education a [398] motion was made and seconded and unanimously adopted all approved bills be paid by separate warrant from the various accounts. The Board of Education of the Borough of Braddock having advertised and legally entered into a contract with the various contractors to erect a building under PWA, and the I-23s being approved by the architect and resident engineer inspector of PWA, they were recognized as properly O.K.'d bills and duly paid. * * *

MRS. LENA Z. KENNEY recalled, testified as follows:

DIRECT EXAMINATION.

Mr. Margiotti:

[417] If you wish to make this short, can't we agree that in every one of these cases there was an offer on the part of the Government and an acceptance on the part of the sponsor in each one of these cases that we have claimed in our complaint. You know that is the case. What is the use of making us get originals and fuss around here for weeks? Do you agree to that?

Mr. Eckert: We will agree to that.

Mr. Margiotti: It is stipulated by and between the parties that in each of the projects enumerated

in the complaint there was an offer from the Federal Emergency Administration of Public Works substantially as already established in the evidence, and an acceptance on the part of the municipality in each case.

Mr. Eckert: This stipulation does not cover the amount of the aid furnished by the Federal Emergency Administration of Public Works to the Municipality.

* * * * *

OFFER.

[459] *The Court:* It appearing from the record that at a prior date in the trial the plaintiff made an offer to prove statements of counsel representing each [460] and every defendant in this case in proceedings that were had on indictment against them at No. 10462 Criminal of this court, as to which the defendants had entered a plea of nolo contendere, on the theory that the declarations of an attorney made in the course of that criminal proceeding upon the presentation of the cases of those individual defendants for sentence on a plea of nolo contendere are admissions on the part of their clients which may be offered in evidence in this case; and the Court having withheld its decision upon that offer, and the matter now coming again before the Court, and the same objection having been offered to its admissibility, we sustain the objection and exclude the evidence proposed to be offered.

Mr. Margiotti: Note an exception. And for the record, Your Honor, I would like to amplify my offer: We renew our offer to prove that at No. 10462 Criminal, United States of America v. Hess and Barton, et al, each and every one of the defendants in the instant case, including the corporations, were involved in said proceeding; that the said proceeding

involved a conspiracy to cheat and defraud the Government by false and fraudulent bid rigging and the submission of false claims and certificates to the United States Government, and that the projects involved were the same projects involved in the present proceeding; that the issues were the same, except that in that proceeding it was criminal in nature and this proceeding is civil; * * *

* * *

EARL D. COVELL, a witness produced on behalf of plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

* * *

Mr. Margiotti:

[470] Q. Did you know about the approval of Forms I-23?

A. Yes, sir.

Q. And as the resident engineer inspector, did you approve those forms?

[471] A. Monthly, yes, sir, for each contractor and subcontractor—well, the subcontractors were included in the general contractor.

Q. At the time the forms came to you for approval, will you state whether or not they had the approval of any other person?

A. Before the Government representative approved these estimates they must be approved previously by the owner's representative.

* * *

[472] Q. Will you state what was the practice with reference to payment of the contractor for the work that he did?

A. The practice that was followed in—I believe I am safe in saying the majority of the cases—near the

end of the month the contractor, the owner's representative and the Government representative would go over the job together and agree on how much work was done during that month and make a pencil memorandum, agree in advance on what would be put on the I-23, the monthly estimate, so called. The contractor would then go back to his office and prepare this I-23 for submission to the owner. Having prearranged the amount and the amount of work, the owner would approve it, turn it over to the Government representative for his approval. He may or may not approve the full amount. If he does not approve the full amount, he writes a non-compliance list at the bottom, which are the exceptions in his approval, and he states if the owner pays in excess of a certain figure he does so at his own risk, and signs his name to that approval and to the list of non-compliance.

Q. When does the contractor get his money?

Mr. Eckert (to witness): If you had anything to do with that.

Q. (Continuing) If you know—on the I-23?

Mr. Eckert:

Q. Did you personally have anything to do with actually paying the contractor?

A. Which question shall I answer, Your Honor?

The Court: Well, Mr. Margiotti is interrogating you.

Mr. Eckert: Well, we object unless it is shown the witness has actual knowledge of the payment.

The Court: I assume the witness is testifying only from his personal knowledge.

[473] Mr. Eckert: I just wanted to know whether he had personal knowledge.

Mr. Margiotti:

Q. Do you know when the contractor was paid?

A. In the contract the owner obligates himself to pay the 15th of the following month.

Q. But is the contractor paid after the I-23 is approved by the representative of the PWA?

A. After the resident engineer inspector approves it, he turns it over to the owner's representative for payment.

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[474] MRS. MARY SNYDER, a witness produced on behalf of defendants, having been duly sworn, testified as follows:

Mr. Margiotti: We ask for an offer at Side Bar as to this witness.

Mr. Nicklas (At Side Bar): We propose to prove by this witness, who is the bookkeeper and cost clerk in charge of the records, the original records, of the Fort Pitt Electric Company, the actual costs of the materials and labor that went into the Washington Trade and Concord Schools, and this testimony would be followed by the testimony of an expert who estimated both jobs, who is familiar with the records, who worked on the jobs, and knows the costs of material and labor were necessary and fair and reasonable; this for the purpose of refuting the testimony of Mr. Proctor offered by the plaintiff as to a fair, reasonable low bid on those jobs.

[475] *Mr. Margiotti:* The offer as made is objected to as being generally incompetent, irrelevant, and immaterial.

The Court: That brings up the question of whether or not the actual cost of doing this work may be offered in evidence by the defendants as some basis for the formation of a finding of what would have been a fair, reasonable low bid.

Mr. Margiotti: But before that question is considered shouldn't the witnesses, the expert wit-

nesses, upon what would have been a fair and reasonable cost be first called?

Mr. Strassburger: It is just the reverse.

Mr. Margiotti: Oh, no. I object to that. That is not right.

The Court: The expert witness would have to testify and give his opinion, I take it, from his own knowledge of the electrical contracting business, and not on the cost that might apply to any particular job, which might have its own individual circumstances.

Mr. Strassburger: But they are both admissible in evidence, as Your Honor said, as a sub-basis of what was a fair and reasonable cost. The cases are abundant on that.

The Court: I would like to see your cases.

(Argument by counsel for the respective parties, the jury having been excused.)

(Witness temporarily withdrawn)

* * * * *

Mr. Eckert: The defendants offer to prove the actual cost of doing each one of the projects which are left in this suit by competent witnesses who are familiar with what those jobs actually cost.

Mr. Margiotti: The offer as made is objected to for the following reasons: First, it is generally incompetent, irrelevant and immaterial; second, the counsel for the defense in his opening to the jury stated that they would not offer any testimony to deny the bid rigging plan, and in substance stated that the defendants had "fallen into an unfortunate practice"; third, the method proposed is not a full and complete item to be considered in passing on the question of damages.

The Court: We are of the opinion that the correct measure of damage in this case is the difference between the amount of the contract price,

which would be the amount that was originally bid for doing the work on each one of the projects involved in this suit, and what would have been a fair and reasonable low bid had there been no conspiracy between the parties defendant to determine in advance the amount of the bid and selecting the party who was to make the bid. We therefore sustain the objection to this offer of proof.

[476] *Mr. Eckert*: This ruling also applies to the offer made by Mr. Nicklas to prove the actual costs on the Concord School?

The Court: Yes, it applies to those.

Mr. Nicklas: Defendants further offer to prove that the actual costs on the respective jobs were fair and reasonable, as compared with the actual contract prices at which the jobs were let. This for the purpose of denying the allegation of the plaintiff that there was a fraud committed upon the United States, the essence of which action is damages: This testimony being offered for the purpose of denying the allegation of liability.

Mr. Eckert: Along that line, may I add to my offer that we proposed to follow the evidence as to actual cost with evidence that the prices paid to do these jobs were fair and reasonable and the lowest prices at which the jobs could be done.

Mr. Margiotti: We renew our objection, that the offer as made is generally incompetent, irrelevant and immaterial; and state specifically that defendants' counsel in his opening to the jury stated that they would have no defense to the bid rigging plan and said to the jury that the defendants "fell into an unfortunate practice."

Mr. Nicklas: We submit that the record of defense counsel Eugene Strassburger's opening remarks to the jury does not say what Mr. Margiotti has just stated.

The Court: Well, irrespective of whether the remarks of Mr. Strassburger to the jury contained the statement made by Mr. Margiotti, counsel for the plaintiffs, we are still of the opinion that the proof of the actual cost of doing the work is not a proper element upon which damages may be predicated in this case, and therefore we sustain the objection.

Mr. Eckert: We respectfully ask for an exception to the ruling of the Court.

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JOHN G. BOWMAN, a witness produced on behalf of the defendants, duly sworn.

[478] *Mr. Margiotti:* I ask for an offer of proof, if the Court please.

Mr. Eckert (at side bar): We offer to prove by the witness on the stand that the reputation of Charles W. Ridinger, Sr., one of the defendants, for honesty, fair dealing and integrity, and being a law abiding citizen, is very good.

Mr. Margiotti: The offer is objected to, as being generally incompetent and immaterial, for the reason that the reputation for integrity and being law abiding is not at issue in this proceeding. (Argument on this matter by counsel for both sides, off the record).

The Court: We are of the opinion that the objection to the proof offered should be sustained; and we rest our opinion in this respect upon *Helvering against Mitchell*, 303 U. S. 391.

Mr. Eckert: I would like to state the offer a little more fully on the record, your Honor. We offer to prove by the witness on the stand that he is Chancellor of the University of Pittsburgh and has been so for some twenty years; that Charles W.

Ridinger, Sr., one of the defendants, is a Trustee of the same University and has been so for many years; that through that and other contacts the witness has become well acquainted with Charles W. Ridinger, Sr.; that the witness knows the acquaintances and associates of the said Charles W. Ridinger, Sr. both in the neighborhood where Charles W. Ridinger, Sr. lives and elsewhere, and also the acquaintances and associates of said Charles W. Ridinger, Sr. in his business activities; that the witness knows the reputation of Charles W. Ridinger, Sr. for honesty, integrity, fair dealing and being a law abiding citizen among those acquaintances and associates of said Charles W. Ridinger, Sr., and that his said reputation is of the very highest.

Mr. Margiotti: Objected to, as being generally incompetent and immaterial, for the reason that the reputation for integrity and being law abiding is not at issue in this proceeding.

The Court: We sustain the objection.

Mr. Strassburger: We offer to prove as to each and every of the defendants in this case, with the exception of Robert C. Carmack, by competent witnesses now in court, the good reputation of each and every defendant except Robert C. Carmack for honesty, fair dealing, integrity and being a law abiding citizen, along the same lines as outlined by Mr. Eckert in his offer as to Charles W. Ridinger, Sr.

Mr. Margiotti: The same objection.

The Court: Sustain the objection.

Mr. Eckert: Will Your Honor please note us an exception?

M. NEIL ANDREWS, a witness produced on behalf of defendants, having been duly sworn, testified as follows:

[479] *Mr. Margiotti:* We ask for an offer at Side Bar.

Mr. Eckert (At Side Bar): We offer to prove by the witness on the stand that he was a special assistant to the Attorney General of the United States in 1939 and 1940, as well as before and since; that as such he was in charge for the Government of the criminal prosecutions against the defendants in this case for the alleged conspiracy in bidding on the electrical work on PWA projects, the same projects that are involved in this suit, and the making of false certificates and affidavits of non-collusion in connection with those projects, which offenses were the subject of the indictments at No. 10462 Criminal to No. 10498 Criminal in this court; that as the representative of the Department of Justice, he agreed with the defendants in this case, who were also defendants in those criminal proceedings, as to the disposition of those criminal proceedings, and that said agreement was that if the defendants would plead nolo contendere to the indictment at No. 10462 Criminal, the Government would be satisfied with whatever punishment the Court imposed in that case as being also in complete satisfaction of all criminal liability of the defendants on all of the indictments, both for the alleged conspiracy and the false certificates and affidavits of non-collusion which were the subject matter of the indictments at No. 10463 Criminal to No. 10498 Criminal, both inclusive; and that, as a matter of convenience, the entire punishment or fines would be imposed at No. 10462, and the indictments at No. 10463 to No. 10498, both inclusive, would be nol. prossed.

Mr. Margiotti: What is the purpose of this?

Mr. Eckert: We submit this in generally competent. The main purpose is to—

Mr. Margiotti: It isn't on the mitigation of damages, is it?

Mr. Eckert: Both. The main purpose is to show that the defendants have already been punished for the same acts upon which a recovery is sought in the present suit, and that, therefore, no recovery for penalties or forfeitures or double damages can be had against them in any other case, and no recovery whatever in this case. Another purpose of this evidence is to mitigate the damages.

Mr. Margiotti: This offer is objected to, as being generally incompetent, irrelevant and immaterial, and having no evidentiary value in any respect in this case.

The Court: We sustain the objection.

Mr. Eckert: Well, will Your Honor hear us?

The Court: Yes. (Informal argument and discussion between Court and counsel, the jury having been excused.)

[480] **The Court:** After hearing the further arguments of counsel, we are of the opinion we have correctly ruled on the objection to the testimony proposed to be offered by Mr. Andrews. The ruling which we have already made will stand.

Mr. Eckert: Will Your Honor note us an exception.

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[484] **Mr. Eckert (at side bar):** Defendants offer in evidence the records of this court at No. 10462 Criminal to No. 10498 Criminal, both inclusive, the first being the case of United States of America against William F. Hess et al, and the other indictments being against other defendants in this case as they will appear from the record at each of said respective numbers. This is offered for the purpose

of showing that the defendants cannot be held liable in the instant suit, because they have already been criminally punished for the same offenses and acts which are made the basis for recovery in the present suit; and also for the purpose of mitigating the damages.

Mr. Margiotti: The offer as made is objected to, as being generally incompetent, irrelevant and immaterial, for the purposes for which they are offered.

The Court: We sustain the objection.

Mr. Eckert: We offer the records of this court at the above stated numbers, No. 10462 Criminal to No. 10498 Criminal, both inclusive, in evidence generally.

Mr. Margiotti: The same objection.

The Court: We sustain the objection.

Mr. Eckert: Please note exceptions to the above rulings.

[485] (Mr. Margiotti continues address to jury on behalf of plaintiffs, during which objection was made as follows:)

Mr. Margiotti: * * * Members of the jury, according to their own testimony, these defendants each and every one of them went before the criminal court and all pleaded nolo contendere, including Mr. Ridinger, Mr. Bickford and Mr. Yates, and according to their own testimony, their own statements, and according to their own—

Mr. Strassburger: Just a minute. I object to that. We were not permitted to put that in for the purpose of pleading double jeopardy. I don't think it is proper for Mr. Margiotti to comment on it. We stayed scrupulously away from it.

The Court. (to counsel for defense): Didn't

you advert to that fact in the course of your argument?

Mr. Strassburger: But afterwards Your Honor ruled that out; you ruled that out of the case.

Mr. Margiotti: But Mr. Eckert referred to it in his argument.

Mr. Eckert: What I argued was, no inference should be drawn from the fact that they appeared in another case and entered a plea of *nolo contendere*—which is the law; and Mr. Margiotti is doing just the opposite.

Mr. Margiotti: I have a right to argue to this jury that these men went into court on projects involved in this very case, they themselves in that case pleaded *nolo contendere*, which for the purposes of that case was the equivalent of guilty, for the purpose of punishment, and were fined.

Mr. Eckert: That case was based upon different statutes than the one upon which the present suit is brought, and the law is well settled, I submit, that the plea of *nolo contendere* cannot be used as a plea or admission of "guilty" in another or subsequent civil suit.

Mr. Margiotti: That is the law. When you bring it out yourself, it is a different proposition.

Mr. Strassburger: No. I said it in my opening and Your Honor ruled it out; and then we did not advert to it, except for the purpose Mr. Eckert stated.

Mr. Margiotti: They can't make a speech and talk on that, without giving me the opportunity to reply and they brought it in the case; and in the opening—

Mr. Strassburger: You would have the right, if the Court hadn't ruled otherwise in the testimony.

Mr. Eckert: We ask to have a juror withdrawn on that account.

[486] *The Court:* We decline the motion to withdraw a juror. Counsel may proceed with his argument. The fact that there was a plea of nolo contendere having been mentioned by counsel for the defendants in the course of their argument, counsel I think may discuss that subject. Possibly he went a little further than he should have gone in the discussion of it, because, as I look at it, there is no inference of liability in this case to be drawn from the mere fact that they entered a plea of nolo contendere in the case that was brought against them in the criminal court. This case has to be decided by the jury upon the evidence that is offered before them in this case. My own view is that the matter ought not to have been adverted to by counsel on either side in the course of their arguments.

Mr. Margiotti (continuing): Therefore, members of the jury, just as the Court has told you, the defense—that is, the same defendants, while that cannot be used as evidence of guilt in this particular case, nevertheless when they were confronted with charges in the criminal court, involving these very projects, the same three men offered no defense, according to the testimony—

Mr. Strassburger: Wait a minute. I object to that. We certainly move now for the withdrawal of a juror. I think, after Your Honor's warning, Mr. Margiotti had no right to make that statement.

Mr. Margiotti: Why not? I am strictly within the Court's ruling.

Mr. Eckert: We ask that Mr. Margiotti's remarks be made a part of the record, and we move for the withdrawal of a juror and continuance of the case, because of that.

The Court: We decline the motion to withdraw a juror. Counsel may continue his argument.

Friday, March 21, 1941,
10:00 A. M.

Oral Charge of the Court.

SCHOONMAKER, J.

Members of the Jury:

This long case is about concluded. You have had a long public service here on this jury, and I hope none of you have been seriously inconvenienced by the fact that you have had to serve on the jury for this great length of time. You have heard the evidence offered by the plaintiffs and the defendants in this case, you have heard the able arguments of counsel on both sides, and the case has now arrived at the point where it is about to be submitted to you for your finding, under the instructions of the Court, which we are now about to give you.

The respective duties of the Court and jury in cases of this kind are these: The Court determines what the law is that is applicable to the case. The jury takes the law as defined by the Court and applies that law to the facts as the [487] jury finds the facts to be. In other words, the jury is the fact-finding body of this court. Where there is a dispute as to the facts of the case, the sole responsibility rests upon the jury to determine what the facts are. We cannot control your judgment in the determination of the facts. Where there is a dispute in testimony between witnesses, upon you rests the sole responsibility of determining which witness is telling the truth. We cannot say to you which witness to believe and which to disbelieve. In determining whether a witness is telling the truth or not, you have a right to consider his interest in the case, if any; you have a right to consider his appearance on the witness stand, his manner of testifying, and the surrounding circumstances under which that testimony is given. However, we may advert to the testimony of witnesses in our charge, and

if we do that we want you to understand that anything we may say about the testimony of witnesses or the facts in this case is a mere expression of opinion on the part of the Court, and it has no binding force or effect upon you whatever, because, as we have already said, the law casts upon the jury the sole responsibility of determining what the actual facts of this case are.

This is an action brought by Morris L. Marcus in the name of the United States against the defendants:

William F. Hess,

John R. Williams,

Thomas G. Hodgdon,

Thomas G. Hodgdon, Jr.,

C. W. Ridinger, Jr.,

C. W. Ridinger, Sr.,

Warren I. Bickford,

Edwin C. Carter,

James V. Burke,

G. L. Craig,

William S. Taczanowsky,

Ralph M. Morganstern,

Max Daniels,

Alvin S. MacNeil,

Walter C. Gloekler,

Robert B. Yates,

H. L. Fullerton,

Robert C. Carmack,

K. K. Wood,

Louis H. Berkman,

Edward B. Sargent, individually and doing business
as Sargent Engineering Company,

Robert N. Morris, individually and doing business as
Morris Engineering Company,

Charles M. Cronenweth, individually and doing business
as Cronenweth Electric Company,

William C. Hemmerle, individually and doing business
as W. C. Hemmerle Electric Company,

James C. Devlin, individually and doing business as
Devlin Electric Construction Company,

Norman B. Leeke, individually and doing business
as Diamond Electric Company,

Herbert D. Hale, individually and doing business as
H. D. Hale Electric Company,

James A. Rodden, individually and doing business
as Rodden Electric Company,

Richard W. Schindler, individually and doing business
as R. W. Schindler Electric Company.

Donald R. Ross, individually and doing business as
D. R. Ross Electric Company,

James H. Stauffer, individually and doing business
as Stauffer Electric Company,

[488] John W. Craig, individually and doing business as
J. W. Craig Electric Company,

R. G. Diodati, individually and doing business as
R. G. Diodati & Bro.

Irwin J. Levinson, individually and doing business
as Levinson Electric Company,

Bernard A. Ross, individually and doing business as
Ross Electric Company,

John E. Hale, individually and doing business as
Hale Electric Company,

Walter F. Weberg and J. R. Walter, individually and
as partners doing business as Fort Pitt Electric
Company,

Winfield S. Martin and Michael J. Murray, individually
and as partners, doing business as Martin and Murray,

Benjamin Raphael and Israel Raphael, individually
and as partners, doing business as Raphael
Electric Company,

Hess and Barton,

Franklin Electric and Construction Company,

Iron City Engineering Company,

Carter Electric Company,

Craig Electric Company,
G. L. Craig Electric Company,
Morganstern Electric Company, Inc.
Daniels Electric Construction Company,
MacNeil Electric Company,
Star Electric and Construction Company,
Industrial Electric Company,
Electrical Contractors Association of Pittsburgh,
Inc.,
Lord Electric Company.

The charge is made in this suit that the defendants conspired and agreed together to submit bids on certain construction work on Public Works Administration projects, a portion of the money for which projects was furnished by the United States, at a higher price than would have been bid for doing such work had there been open and fair competition, it being alleged that the defendants did, in pursuance of said conspiracy, actually cause to be submitted as bids on such projects a price higher than the lowest competitive bid prepared by some of the defendants, being an average bid between the highest and the lowest bidders by one of the particular defendants, and did cause to be submitted as an offer to perform such particular work on the projects involved in this case a price that was more than the fair market price for such work and higher than the lowest responsible bid would have been, had there been no conspiracy among the defendants to prevent competitive bidding.

Also, in connection with such bids so submitted by defendants under said alleged conspiracy, the charge is made that the defendants, in bidding pursuant to said plan, submitted a certificate or affidavit that the proposal was genuine and was not sham or collusive or made in the interest or on behalf of any person, firm or corporation not named therein, and to the effect that the person bidding had not directly or indirectly

induced or solicited any other bidder to submit a sham bid, or any other person, firm or corporation to refrain from bidding, and that the bidder had not in any manner sought by collusion to secure for himself an advantage over any other bidder; and that the defendants, in pursuance of the conspiracy, caused other sham bids to be submitted and caused other persons to refrain from bidding, and that the bids submitted on the projects mentioned in the plaintiffs' complaint in this case were false, fraudulent and fictitious, and were made with the intent and for the purpose of defrauding and cheating the United States. And it is alleged that the bids submitted were accepted by the awarding authorities and approved by [489] an agency of the United States Government, and that the claims for the work done and material furnished were based upon such fraudulent contracts, and therefore fraudulent in themselves, and were presented and approved and paid out of moneys of the treasury of the United States.

The False Claim statute of the United States, upon which this action is based is Section 3490 of the Revised Statutes of the United States, which reads partly as follows:

"Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of Section 5438 of the Revised Statutes of the United States, shall forfeit and pay to the United States the sum of \$2,000 and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same act."

This action is brought in the name of the United

States by Morris L. Marcus as an informer, under the provisions of a Federal statute which reads:

"The several District Courts of the United States, the Supreme Court of the District of Columbia, the several District Courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall, wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try and determine such suit. Such suit may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the Judge of the Court and the District Attorney first filed in the case, setting forth their reasons for such consent."

Under the provisions of the Federal statute, the person bringing such suit and prosecuting it to final judgment as an informer is entitled to receive one-half of the amount of such forfeiture, as well as one-half the amount of the damages he shall recover and collect; and the other half thereof shall belong to and be paid over to the United States.

It has been drawn to our attention that some of the jurors have from time to time been taking notes during the progress of the trial. If any juror has made written notes, he should destroy them and not take them into the jury room when you retire to arrive at your verdict in this case, for in arriving at their verdict jurors are to rely upon their memory as to the evidence of witnesses. The written documents, however, that have been offered in evidence you may have before you.

Now, the first question, I would say, for you to consider is whether or not the defendants, or any of them,

were involved in the conspiracy to defraud the United States in the matter of electrical contracts awarded on certain PWA projects in the Western District of Pennsylvania to which the United States appropriated and contributed Federal funds to the extent of forty-five per cent or thirty per cent of the actual cost of the electrical work. In this case there is no dispute, as far as I [490] have been able to see, over the fact that these PWA projects were carried on by municipal corporations, school districts and counties, and that the United States contributed its share or portion of the cost of completing the projects. There has been no dispute over the fact that an application was made to the Federal Government for a grant of Federal money to be used in the construction of these projects, and that plans and specifications were prepared by the local municipality or school district or county and submitted to the Public Works Administration of the Federal Government for approval, and that bids were asked for and received for doing, not only the electrical work, but all the other work involved in the completion of the projects, and that the bids were approved and that the funds that the Government agreed to contribute were paid out in the course of carrying on these projects, with certain exceptions where the money was retained by the Federal Government because of the allegation that fraud had been perpetrated in the matter of bidding on these contracts. In connection with that, a table has been prepared by counsel, which will be submitted to you, as a calculation of the number of projects involved, the amount of the electrical contracts, and their estimate of what would have been a fair cost, and so forth. This will be given to you for your guidance and consideration in connection with the determination of the damages, if any, that might be recovered in this case. So we say to you that, so far as the actual doing of the work that is involved in any

project in this case, there is no dispute over the fact that proposals were invited by the sponsor of each project for public bids upon the electrical work involved in these projects; and that the defendants, or some of them, submitted bids therefor and were awarded contracts for the electrical work upon these projects, fulfilled these contracts, and received payment therefor, thirty or forty-five per cent of which came from the United States, except in the cases to which I have already called your attention, where there has been money held back by the Government because of the discovery or allegation that fraud was involved in the matter of the letting of the contracts. So with that part of the case we think you will have no difficulty, because there is no real dispute about the carrying on of these Federal projects and the doing of the work.

The question in dispute in this case really is this: Was there a conspiracy among the defendants, or some of them, whereby they would agree among themselves as to which defendant was to submit the low bid for a particular project, and which of the other defendants would submit other and higher bids for the same project, thereby intending to control, and actually controlling, the low bid to be submitted, thereby preventing any competitive bidding on any of the projects involved in this suit, and compelling the United States Government to contribute and pay for doing the electrical work on these projects more than the Government would have been required to pay, had there been open and free competition in the open market for doing this electrical work.

Now, that is the first issue of fact for your determination, as I look at it: Was there a conspiracy to defraud in this case, in the matter of bidding, as we have already stated? If there was such a conspiracy, then a fraud was perpetrated upon the Government, so far as concerns that portion of the cost of the work on these

electrical contracts which the United States was obligated to pay, to the extent that such cost exceeds the amount that the Government would have been obliged to pay, had there been open and fair competitive bidding.

Now, to guide you in your determination of whether or not a conspiracy existed between the defendants, or some of them, to defraud the Government in securing awards of electrical contracts to a predetermined bidder selected by them in advance, we will define [491] a conspiracy to you as follows:

A conspiracy is a combination of two or more persons by some concerted action to accomplish some unlawful purpose. A formal agreement between the parties is not essential to the formation of a conspiracy; it is sufficient if there is a concerted action of all the parties working together understandingly for the accomplishment of a common purpose. Therefore, the common design being the essence of the charge, it is sufficient that two or more persons in any manner act together for the accomplishment of an unlawful design. It is not necessary to prove that the defendants agreed in terms upon a design to be pursued by common means; but where they pursue the same purpose, with a design to its attainment, the jury may conclude that they were engaged in a conspiracy to effect it. It is not necessary that each conspirator have knowledge of all the details of the common design, nor is it necessary that the conspirators should meet together. If they have a mutual understanding and act through one or more individuals as a consequence of such mutual understanding, the conspiracy is complete. It is indeed not necessary that the conspirators be even acquainted with each other; if they conspire to accomplish the illegal purpose through a common acquaintance or go-between, the conspiracy may be complete. When the existence of an unlawful conspiracy is proved, an act by one of the parties becomes the act of all. A party to a conspiracy is bound

by what his co-conspirators did in furtherance of the accomplishment of the conspiracy. Each member of a conspiracy is responsible for every act of every other member done by common consent in furtherance of the illegal purpose, and also for such acts though not consented to beforehand, if assented to afterwards.

Now, the plaintiffs in this case have the burden of showing by the fair weight of testimony that the defendants were engaged in a conspiracy to defraud the United States, and, in order to establish the fact of that conspiracy, maintain the burden which the law casts upon them, they have produced witnesses here upon the subject of whether or not there was a conspiracy among the defendants, as charged in this case. The principal witness on the subject of conspiracy is the witness Carmack, who is one of the defendants in this case, who has testified to the existence of the conspiracy among the defendants, who are members of the Electrical Contractors Association of Pittsburgh, as to the selection of which of the defendants were to submit bids for the electrical work on the projects involved in this suit. If you believe that Carmack has told the truth as to the alleged bidding plan of the defendants, that would be sufficient evidence on which to base a verdict that the defendants had conspired to defraud the Government in the matter of the contracts for electrical work on the projects involved in this suit. However, we say to you that Carmack admits that he himself was a party to this alleged conspiracy. Therefore, you should scrutinize his testimony carefully, look for corroborating evidence. In that connection, you have before you the fact that in testifying he brought into court his diaries as to the dates of the meetings among the defendants who were to bid on the particular projects, showing the names of the persons who were to bid on those projects; and the plaintiffs have also brought into court those yellow work sheets, where he made a computation as to the prime

costs submitted at the meeting of the persons who were to bid on a particular project, averaged them and determined who was to be the successful bidder on the contract, and giving to others of the defendants represented at such meeting on that particular project the amounts, not only that the low bidder was to get but as to the amounts that these other defendants were to bid, in order to show that there was in fact competitive [492] bidding on the project. And on the subject of whether or not Carmack's verbal testimony is corroborated in court, you have the records of the Electrical Contractors Association, the records of its meetings, the records of the papers that were found in the Electrical Contractors Association's office and produced in court here, which you might find would corroborate the testimony of Carmack. However, we say to you that, even without corroborating evidence, if you believe the testimony of Carmack, that would be sufficient evidence upon which to base a verdict for the plaintiffs in this case. And, in this connection, we invite your attention to the fact that no witness has taken the stand to deny the existence of a conspiracy nor the participation of the defendants therein.

If you find that a conspiracy exists as charged, then you will have to determine which of the defendants were parties to that conspiracy. If you find that none of the defendants were involved in the conspiracy charged in this case, then you would return a verdict in favor of the defendants. If, on the other hand, you find that a conspiracy, as charged, exists in this case, you would return a verdict in favor of the plaintiffs and against the defendants involved therein for such amounts of damage and penalty as you would find from the evidence in this case that the plaintiffs would be entitled to, computed according to the measure of damage which I shall now give you.

The damage to which the plaintiffs would be entitled would be measured by the difference between the contract price paid the contractor therefor in excess of the amount which the United States would have been obliged to pay for the same work, had there been open, competitive and uncontrolled bidding.

To support the claim of the plaintiffs that the United States has suffered damages through the alleged bidding conspiracy of the defendants, the plaintiffs have offered the testimony of the witness Proctor, who has testified to his experience in the electrical business, to his experience in estimating the cost of electrical work, and to his estimates of a fair competitive low bid for doing the electrical work involved in these several projects to which the United States contributed a share. And on this subject of what a fair competitive low bid would have been for these several projects, the defendants have submitted the testimony of Loughridge and other witnesses, some of whom testified that they actually estimated the work on which the bids were submitted, being estimators in the employ of one or more of the defendants; and these witnesses have testified as to what would have been a fair and reasonable low bid for the projects involved in this suit. And, as I recall it, the testimony offered by the defendants, as to all of the projects that are involved in this suit, the estimate of what would have been a fair low competitive bid in the open market was either the bid figure that was actually submitted or a sum greater than the bid figure that was actually submitted. I do not recall of any case where the testimony offered by the defendants shows that there was an estimate submitted that was less than the amount of the contract price or the bid upon which the contract was originally awarded. However, that is a matter for your consideration; do not rely on my memory in regard to that, because you are the ones who have to determine what the actual

facts are from the testimony of witnesses, and from the testimony of all the witnesses in this case, upon the subject of what would have been a fair bid as well as all other disputed issues of fact; it is for you to say as to what would have been a fair and reasonable low bid for doing the electrical work on the projects involved in this suit. You will make your own computation of actual damage, if any, suffered by the United States by reason of the alleged [493] conspiracy to prevent open and fair bidding,—if you find, of course, that a conspiracy exists and that a fraud has been committed upon the United States.

Now, in computing the actual damage that was suffered on a particular project or particular instance, you would take the contract price for each of the PWA projects as to which testimony was introduced in this case, and then determine what you find to be a fair and reasonable low bid for doing the electrical work on that particular project, had there been fair and open competitive bidding. If that fair and reasonable low bid is lower in amount than the price for which the contract was awarded, the difference between the contract price and the fair and reasonable low bid would be the measure of actual damage suffered by the United States as to that particular project. Then the sum total of the actual damages would make up the total actual damages suffered by the United States. This amount you would then double to arrive at the damages which would have accrued to the United States by reason of the conspiracy to present false claims against the United States.

The particular projects in which there has been evidence that a fair and reasonable low bid is less than the contract price are these—all of them Pennsylvania projects:

1908-F—Miller Elementary School;

1617-F—Arsenal Elementary School;

- 1303-R—Washington Trade School;
- 1173-D—Prospect Junior High School;
- 1302-R—Burgwin Elementary School;
- 1688-F—Schiller Elementary School;
- 1150-R—Carmalt Elementary School;
- 1907-F—South Vocational High School;
- 2016-F—Spring Garden Elementary School;
- 1317-R—Banksville Elementary School;
- 1156 —Spring Hill Elementary School;
- 1687-F—Concord Elementary School;
- 1618-F—Crescent Elementary School;
- 1299-R—Perry Athletic Field House;
- 7501 —Juvenile Court;
- 4242 —County Home, Woodville;
- 7000-R—Municipal Airport, A, B, C, D, E;
- 7000-R—Municipal Airport, F;
- 7000 —North Park Bath House;
- 9616 —North Park Boat House;
- 1920 F—West View High School;
- 1069 —Hampton School Additions;
- 1144 —North Fayette High School;
- 1692-D—Braddock Junior High School;
- 1130 —Westinghouse Memorial High School;
- 1392 —Kenmar School;
- 1458 —Edwin Markham School;
- 1703-DS—Crafton Municipal Building;
- 1456 —Lincoln School Building;
- 1575 —Filtration Plant, Braddock;
- 2224-F—Shaler Township Softening Plant;
- 1546 —Library School;
- 1977-F—Siebert School;
- 1189 —School Building at Chalfant;
- 1633-F—Cowley-Goettman Playground;
- 1600-F—Sophia Evert No. 4 Playground;
- 1600-F—Schenley Park Comfort Station;
- 1600-F—Garfield Playground Field House;
- 1600-F—Townsend Playground Field House;

1600-F—Larimer Playground Field House;

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1600-F—Armstrong Playground Field House;

1633 —McGee Playground;

1987 —West Penn Playground;

2208 —Homewood, etc. Filter Houses;

1600-F—Sophia Evert No. 1 Field House;

1600-F—McKinley Park Field House;

2208 —Schenley, etc. Filter Houses;

1634 —Burgwin Playground.

In addition to that, if the United States is entitled to recover by reason of the fact that you have found that a conspiracy exists among the defendants to present false claims against the United States, the United States is entitled to recover under this False Claim statute a penalty of \$2,000 for each project in which there has been collusive bidding. The projects to which this penalty might be applicable are those we have just listed as projects on which evidence has been offered that a fair and reasonable low bid is less than the contract price, and also the following projects, on which there is evidence of collusive bidding but no evidence of any actual damage suffered, namely:

Pa. 1689-F—Whittier Elementary School;

Pa. 1695-F—Blawnox Municipal Building;

Pa. 1935-F—East End Elementary School;

Pa. 1975-F—Homeville School;

Pa. 2017-F—West Liberty School;

Pa. 2019-F—Girls Vocational School;

Pa. 2023-F—East Ohio Grade Crossing;

Pa. 2976 —Jerome Street Bridge.

The total number of the projects to which the jury finds this penalty to be applicable multiplied by \$2,000 would make the total amount of the penalties recoverable in this case.

[495] If you return a verdict in favor of the plaintiffs, you would add together the total amount of damages you find that the plaintiffs have suffered, doubled, and the total amount of penalties allowed by you, and bring in a verdict in one lump sum. In making up the computation of such actual damages suffered by the United States, you will bear in mind that the United States was to contribute forty-five per cent of some of the projects and thirty per cent of the others; so that, in making up a computation of the actual damages suffered by the United States, you would take forty-five per cent or thirty per cent of the actual damage, if any, which you would find to have resulted from the conspiracy of the defendants, taking only forty-five per cent of the actual damages in the cases where the United States contributed forty-five per cent of the electrical cost, and taking only thirty per cent of the actual damage in the cases where the United States has contributed thirty per cent of the cost. Then from that amount you would deduct any funds retained by the United States out of its share of this computation. There was evidence, as I recall it, that the United States in some of the cases retained certain sums of money on account of an allegation having been made that there was collusive bidding on the projects, and the Government, when it was apprised of that contention, paid no further money on such projects.

And in connection with the Government's portion of furnishing the money to complete these projects, we say to you that it is of no importance that the money paid out to the electrical contractors on the projects involved in this case was paid through the agency of the Municipal Corporation, School District, County, or other agency of the State of Pennsylvania. In our view, the money to be expended as the share of the United States on these projects was ear-marked as Federal funds. All these projects carried on with money derived from the

Federal Government had to be approved by the Federal Administrator. The diversion of these funds to the project to which they were assigned was a diversion of Government money.

If you find a verdict in favor of the plaintiffs in this case, your verdict might properly be worded somewhat as follows: "We find a verdict in favor of the plaintiffs for (blank) dollars"—naming the total amount of your damages and penalties against the defendants you find to be parties to the conspiracy to defraud. If you find a verdict against all of the defendants, you need not mention them by name, but it would be sufficient for you merely to say, "We find a verdict for the sum of (blank) dollars against all the defendants". If, on the other hand, you find a verdict in favor of all of the defendants, you would merely return a verdict as follows: "We find a verdict in favor of the defendants". If you find a verdict in favor of the plaintiffs against some of the defendants, you would name the defendants against whom you find that verdict, and then say as to such defendants in whose favor you desire to return a verdict, "We find a verdict in favor of the defendants (naming them)".

The plaintiffs have prepared and submitted to the Court a computation or calculation of their claimed damages. We are going to let this sheet go out to you, not as evidence that the plaintiffs are entitled to this amount of money, but as a mere calculation of the money that the plaintiffs claim they are [496] entitled to on account of the damages. This tabulation shows the contract price, the plaintiffs' contention as to what a fair and reasonable competitive low bid would have been, and the plaintiffs' contention as to what the total amount of actual damage suffered was, the percentage of the Government grant—whether it is thirty per cent or forty-five per cent—and then the actual claim of the United States for damages suffered on a particular project. That would be arrived at by taking forty-five

per cent or thirty per cent of the actual damage which the plaintiffs claim they have shown by the proof in this case, and then the doubling of that amount, under the statute, would give you the actual amount of damage claimed by the plaintiffs in the case. Bear in mind always that this paper of itself is not evidence that the damages were suffered that are shown on this sheet; it is merely the plaintiffs' calculation of what the plaintiffs contend that the evidence in this case discloses.

In addition to that, the plaintiffs have submitted for your convenience a tabulation of the projects involved in this suit to which they contend that the penalty is attached. This also is a mere calculation, and is for your convenience and use in the consideration of this case. It has no binding force and effect upon you. You are to find the cases to which the penalty attaches, and if you do not agree with this calculation you can make up your own.

The defendants also have submitted for your consideration their computation. In this they give the name of the project, they give the percentage of the PWA grant, they give the name of the contractor, they give the amount of the contract price, they give the amount of Loughridge's estimate, and then they show on the last column the amount withheld by the Government—that is, the various amounts to which I called your attention, that in some instances there were certain amounts withheld. This also is a mere calculation and has no evidential force, because you are to determine, if you find that a conspiracy exists, whether or not the Government has been damaged and what the amount of that damage is.

Both the plaintiffs and the defendants in this case have submitted to the Court certain points for charge. These points we refuse, except in the following instances where we affirm them—we will not read the points which we refuse:

Defendants' Point No. 5:

"No inference against the defendants may be drawn from the fact that they refused to testify because in so doing they were merely exercising a right which the United States Constitution gives them."

That point is affirmed. But we say to you, in connection with that, it would have a bearing upon whether or not there was any evidence that would refute the testimony of Carmack, for instance, when no witnesses have taken the stand to deny this testimony; that would be a fact for your consideration.

Defendants' Point No. 6:

"In no event would the Federal Government be entitled to the whole of the difference between what the contract was let at and Proctor's estimate, but [497] only to thirty per cent or forty-five per cent of such alleged damages, depending on the percentage which the Government agreed to grant on each respective project."

We affirm that point; we have already so stated.

Defendants' Point No. 27:

"If the jury should find in favor of the plaintiffs, from any damages which may be found on account of the Concord Elementary School project there should be deducted the sum of \$1500.00 withheld by the Government on account of the electrical contract on that project."

We affirm that point; that is what we have already said to you.

Defendant's Point No. 28:

"If the jury should find in favor of the plaintiffs, from any damages which may be found due on account of the Schiller Elementary School project there should be deducted the sum of \$2,000 with-

held by the Government on account of the electrical contract on that project."

We affirm that point.

Defendants' Point No. 29:

"If the jury find in favor of the plaintiffs, from any damages which may be found on account of the South Vocational High School there should be deducted the sum of \$4913.01 withheld by the Government on account of the electrical contract on that project."

We affirm that point.

Defendants' Point No. 30:

"If the jury should find in favor of the plaintiffs, from any damages which may be found on account of the Arensal Elementary School project, there should be deducted the sum of \$2500 withheld by the Government on account of the electrical contract on that project."

That point is affirmed.

Defendants' Point 31:

"If the jury should find in favor of the plaintiffs, from any damages which may be found to be due on account of the Braddock Junior High School project there should be deducted the sum of \$2446.61 withheld by the Government on account of the electrical contract on that project."

That point is affirmed.

[498] I would like to inquire now whether counsel desire me to charge on any further points that we may have omitted from our charge. You may state in open court what you want.

Mr. Eckert: I request that the Court state to the jury that the following defendants made no certificates or affidavits of non-collusion whatever: C.

W. Ridinger, Sr., C. W. Ridinger, Jr., Warren I. Bickford, and the Iron City Engineering Company.

The Court: We are unable to say whether that is so or not. The jury will have the evidence before them, and they can determine whether those particular defendants did or did not. We do say, however, that whether they did or whether they did not make certificates or affidavits of non-collusion, that fact would not excuse them from liability in this case, if they were parties to the conspiracy to defraud.

Mr. Margiotti: I just noticed one matter that I would like to call to the Court's attention. In making the charge as to what the Government would be entitled to receive, when he gave the calculation there would be the difference between the contract price and what they would find to be a reasonable low bid, or what they would have been required to pay if there had been competitive bidding, he said that would be the amount suffered by the Government and then in the end it would be doubled; in that instance the Court did not state it would be either forty-five per cent or thirty per cent of that damage, but the Court did state it later, and the Court affirmed the point, so he corrected it. I am just calling it to the attention of the Court now, so there cannot be any—

The Court: There is no question about that. The Government would only be entitled to recover thirty or forty-five per cent of the actual damages.

Mr. Margiotti: And on this calculation of the defendants, at the bottom they have a notation. It says: "(Asterisk) \$1,000 withheld by PWA on these jobs." Now, that \$1,000 withheld, with five asterisks there and two at the bottom, that means \$1,000 altogether and it does not mean seven; it might be misunderstood.

Mr. Eckert: We have added that on there.

Mr. Strassburger: There is one thing further. Your Honor called attention to the fact that Mr. Carmack was not contradicted—in what respects he was not contradicted, and I think Your Honor, perhaps inadvertently, forgot to mention the fact that he was contradicted by a large number of witnesses who came from supply houses, bonding company, and so forth. And another thing that Your Honor has not called to the attention of the jury, that the witnesses who testified for the defendants as to fair and reasonable costs of particular items of equipment, in addition to the estimators, were also representatives of the various supply houses.

[499] **The Court:** Yes, there was testimony offered by the witnesses for the defendants as to particular items that appear on the estimate of Proctor as to the fair prices on those. Those, of course, are for the consideration of the jury. And in connection with whether or not the testimony of defendants' witnesses in fact contradicted Carmack, to which counsel has now called my attention, we say that is a matter exclusively for the jury, and they have a right to consider that testimony, as well as any other testimony in the case which would contradict or tend to contradict Carmack, if it does so.

Mr. Nicklas: Your Honor—inadvertently, I believe on two occasions stated that this suit was brought by Morris L. Marcus on behalf of the United States, but you failed to mention the fact that the suit is also brought in his own right, and the pleadings show that.

The Court: However it may be, the foundation of the suit is the Federal statute. It is the suit of the United States on relation of the individual plaintiff, Morris L. Marcus; and, of course, he is interested in the suit, because he is entitled to half of

anything that may be recovered, if anything is recovered, and he has to pay the costs of the litigation.

Mr. Margiotti: If Your Honor please, there is just one matter I would like to discuss now, and that is all these exhibits. My impression on the exhibits is they ought to all go out with the jury—I think that is Mr. Eckert's, too. I was going to suggest this, that we give to the jury our respective calculations, and then if the jury wants the exhibits we send them out to them, rather than bundle them up and send them all up now.

The Court: Of course, there must be a differentiation there. If you were to say exhibits that have been offered in evidence; those that have been merely marked for identification—

Mr. Margiotti: I mean those that are actually offered in evidence, and part of the evidence.

The Court: That is true. There is no need to clutter up the jury room with all of these exhibits. If the jury themselves actually want any of them, they can send word by bailiff, and counsel will be here to produce them.

Mr. Margiotti: Then another thing, Your Honor,—you said yesterday when there was some objection made to my argument that Proctor's estimates would be in the hands of the jury. Of course, if the exhibits do go out, I would like to have the estimates go out, and, of course, their estimates—

[500] *The Court:* There was only one of those estimates of Proctor that was admitted in evidence, as I recall it.

Mr. Margiotti: They were all admitted, Your Honor, but there was only one of them shown to the jury, and that was shown by Mr. Burke, as I recall it. And then I tried to show the rest, and there was an objection.

The Court: If you want the one that Mr. Burke showed to go out with the jury, that is all right.

Mr. Eckert: We had some estimates too, Your Honor.

Mr. Nicklas: We had some of Mr. Johnston's that were shown to the jury by Mr. Margiotti, which should go out, on the Concord School job.

Mr. Margiotti: That is right. That was on the question of the erasures, and so forth.

The Court: Counsel may come to side bar. (At side bar) And now, at side bar, the Court inquires of counsel whether they desire to note exceptions to the charge, or any part thereof?

Mr. Eckert: The defendants except specially and specifically to the refusal of such of their points as were refused.

The defendants also specifically and specially except to the learned Court's comment made in conjunction with its affirmation of the defendants' point for charge numbered 5.

The defendants also specifically except to the portion of the charge wherein the Court purported to define to the jury the first question they have to decide, substantially in this language: "Now, the first question is whether or not the defendants, or any of them, were involved in a conspiracy to defraud the United States in the matter of electrical contracts awarded on certain PWA projects", for the reason that such statement of the question is not in accordance with the statute upon which this suit is brought. Section 3490 of the Revised Statutes, upon which this suit is brought, incorporates Section 5438 of the Revised Statutes, which does not make a basis for recovery the defrauding of the United States but the presentment for payment or

Oral Charge of the Court.

approval of a false claim upon or against the United States on the latter's own liability to the claimant. What Section 5438 provides is more fully shown by said section of the Revised Statutes itself, to which reference is hereby made for this purpose.

We also respectfully except to the portion of the charge relating to the measure of burden of proof [501] upon the plaintiffs in this case, on the ground it is not by mere preponderance of the evidence, but by evidence which satisfies the jury beyond a reasonable doubt.

The Court: You have already presented a point on that subject. Your legal question is properly taken care of by that.

Mr. Eckert: The Court—inadvertently, I believe—said that the defendants' evidence in no instance was that a fair and reasonable low bid in open competition would have been lower than the amount at which the respective contract was actually let. In fact, in several instances the defendants' evidence, consisting of the testimony of Mr. Loughridge, was that a fair and reasonable low bid in open competition would have been somewhat less than the contract price.

The defendants also specifically except to the Court's inclusion of the County Home job at Woodville as one which may have been awarded according to the alleged bidding plan, which consisted of averaging bids. There is no evidence in this case to show that the County Home at Woodville was handled in accordance with any such bidding plan, but that, if any improper action was taken by anybody with respect to the bidding on that project, it was the individual action of a few persons, and not part of the conspiracy upon which the present suit is based.

The defendants also specifically except to the

portion of the charge to the effect that a \$2,000 penalty or forfeiture may be recovered for each project which the jury could find was handled in accordance with the alleged conspiracy. We submit that only one \$2,000 penalty or forfeiture could be included in the jury's verdict in this case, regardless of the number of projects that the jury may find were handled in accordance with the bidding plan which is the basis of the alleged conspiracy.

We also except to the charge of the Court, as we understood it, that \$2,000 as a penalty or forfeiture could be collected and should be awarded by the jury on both the first and second list of projects which the Court enumerated in its charge. As I understood Your Honor, Your Honor made a flat statement that the jury should allow \$2,000 on each project, whereas, of course, it would only be, in any event, an allowance of \$2,000 on each project that the jury found was handled in accordance with any—

The Court: Well, the whole purport of my charge was that; it could not be understood any other way.

Mr. Eckert: And we also specifically except to the portion of the charge in which the Court stated that it made no difference that the Government funds were paid by the PWA to the local municipality and paid by the latter, sometimes called the sponsor, to the [502] electrical contractor. We submit that there has been no violation of Section 5438 of the Revised Statutes, which is incorporated into the Informer's Act, upon which this suit is brought, because the defendants presented no false claims for payment from the United States Government, their right to look for pay-

ment being limited to the local municipalities, with which alone they contracted.

Mr. Strassburger: The defendants specially except to that portion of the charge in which the Court directed the jury to double the damages, if the jury found in favor of the plaintiff. We contend that the doubling of the damages is a matter of discretion with the jury.

Mr. Nicklas: Defendants specially except to that portion of the charge wherein the Court stated, in substance, that "If you believe the testimony of the witness Carmack, even with no corroborating evidence, his testimony alone would be sufficient to warrant your finding for the plaintiff". I don't think that is correct.

Mr. Margiotti: The plaintiffs except to the Court's refusal of its one point, and to the Court's affirmance of defendants' point No. 5. (Further informal discussion).

Mr. Strassburger: The defendants except to the unfavorable prominence given in the charge of the Court to the corroboration of Mr. Carmack, such as referring to the work sheets, diaries, etcetera, whereas the Court did not refer in its charge to any of the evidence which was produced by the defendants in reference to numerous matters which did contradict Mr. Carmack.

The Court: Members of the jury, I have heard counsel with reference to their exceptions to my charge, and I have decided to affirm without qualification the defendants' fifth point, which reads as follows:

"No inference against the defendants may be drawn from the fact that they refused to testify, because in so doing they are merely exercising a right which the United States Constitution gives them."

Are there any other matters now to be brought to the attention of the Court? (No response).

Members of the jury, I have had the Clerk prepare a verdict sheet, which gives you the names of all the defendants who are involved in this case, as well as the plaintiffs. The form you will have to write yourselves, but there is plenty of room here for you to do it.

(Jury retires).

PWA Form No. 230

Plaintiffs' Exhibit 22.

**FEDERAL EMERGENCY ADMINISTRATION
OF PUBLIC WORKS
Harold L. Ickes, Administrator.**

**TERMS
AND CONDITIONS**

SEPTEMBER 15, 1937.

PART I—GENERAL TERMS AND CONDITIONS.

1. PREREQUISITES TO GOVERNMENT'S OBLIGATION.—The United States of America (hereinafter referred to as the "Government") shall be under no obligation to the applicant to whom the offer is made (hereinafter referred to as the "Applicant") to take up and pay for any obligations which it offers to purchase (hereinafter referred to as the "Bonds") or to make any grant:

(a) *Representations.*—If any representation made by the Applicant in its application or in any supplement thereto or amendment thereof, or in any document submitted to the Government by the Applicant, shall be incorrect or incomplete in any material respect;

(b) *Financial Condition.*—If, in case the Government has offered to purchase Bonds, the financial condi-

tion of the Applicant shall have changed unfavorably in a material degree from its condition as theretofore represented to the Government;

(c) *Cost of Project.*—If it appears that the Applicant will not be able to complete the project described in the Government's offer (hereinafter referred to as the "Project") for the sum allotted by the Government, or that the Applicant will not be able to obtain funds necessary to complete the Project;

(d) *Legal Matters.*—If, in case the Government has offered to purchase Bonds, the bond transcript shall not show that such Bonds are binding and legal obligations; and if, in all cases, proper disposition shall not have been made of all legal questions affecting the application for a loan or grant or both, the Project, and the construction thereof;

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(h) *Undue Delay.*—If the Applicant shall delay for an unreasonable time acceptance of the offer from the Government to aid in financing the construction of a Project by a loan and grant, grant only, or loan only (hereinafter referred to as the "Offer") or performance of any of the duties or obligations to be performed by it under the Offer and the terms and conditions;

(i) *Compliance.*—If the Applicant shall not have complied with all the provisions contained or referred to in the Offer and the terms and conditions theretofore to be complied with by the Applicant;

(j) *Plans and Specifications and Certificate of Purposes.*—If the Applicant shall not have filed with the Government plans and specifications for the Project, and a certificate or certificates of purposes setting out in detail the amounts and purposes of the expenditures which the Applicant proposes to make in connection with the Project, and the Government shall not have accepted such plans and specifications and such certificate or certificates of purposes as showing that the Project will be

constructed in a sound, economical, and efficient manner so as to provide reasonable security for the loan to be made by the Government (in case the Government has offered to purchase Bonds) and so as to comply in all respects with all applicable Federal Statutes, the Offer, and the terms and conditions;

(k) *Architectural or Engineering Supervision and Inspection.*—If the Applicant shall not provide and maintain competent and adequate architectural or engineering supervision and inspection of the construction of the Project.

2. **EXPENSES.**—The Government will be under no obligation to pay any costs, charges, and expenses incident to compliance with any of the duties or obligations of the Applicant.

4. **BONUS OR COMMISSION.**—The Applicant will not pay any bonus or commission for the purpose of obtaining an approval of the application for a loan or grant.

9. **OTHER FINANCIAL AID FROM THE GOVERNMENT.**—If the Applicant shall receive any funds (other than those received under the terms of the Offer), directly or indirectly, from the Government, or any agency or instrumentality thereof, to aid in financing the construction of the Project, to the extent that such funds are so received the grant will be reduced, and in case the Government has offered to purchase Bonds, to the extent that such funds so received exceed the grant set forth in the Offer, the aggregate principal amount of Bonds to be purchased by the Government will be reduced.

10. **EXPENSES PRIOR TO OFFER.**—The Government assumes no obligation to pay any grant on any portion of the Project on which costs have been incurred by the Applicant prior to the date of the Offer, regardless of whether or not the Applicant, at the time of incurring such costs, relied on the possibility of a grant being

subsequently obtained from the Government to aid in financing the Project. If reimbursement for such costs is requested by the Applicant in its certificate of purposes, such costs will be explained in detail.

11. **STATE OR TERRITORIAL LAW.**—Anything in the Offer or the terms and conditions to the contrary notwithstanding, nothing herein shall require the Applicant to observe or enforce compliance with any provision hereof, perform any other act or do any other thing in contravention of any applicable State or Territorial law: *Provided*, That if any of the provisions of the Offer or the terms and conditions violates any State or Territorial law, or if compliance with the provisions of the Offer or the terms and conditions would require the Applicant to violate any State or Territorial law, or if because of any other reason the Applicant cannot comply with any of such provisions, the Applicant will at once notify the Administrator in writing in order that appropriate changes and modifications may be made by the Administrator and the Applicant to the end that *the Applicant may proceed as soon as possible with the construction of the Project.*

PART II—GRANT AND BOND PAYMENTS TERMS AND CONDITIONS.

1. **ADVANCE GRANT.**—At any time after the acceptance by the Applicant of the Offer, the Applicant may request an advance on account of the grant in an amount not exceeding 15 per cent of the previously approved estimated cost of the Project. This advance grant may be used for paying architectural, engineering, and planning fees, costs of surveys, borings, and other preliminary investigations, costs of preparation of plans, specifications, and other forms of proposed contract documents, costs of advertisements for bids for contracts, construction costs, and the printing of the Bonds. Such advance grant will not be used in payment of legal fees

or of the costs of acquisition of lands, easements, or rights-of-way. The request for this advance grant must be accompanied by a signed certificate of purposes in which must appear in reasonable detail the purposes for which such advance grant will be used. If the Project, to aid in the financing of which the Government has made an advance grant, is abandoned, the unused advance grant proceeds will be returned to the Government, but nothing herein shall be construed to waive any right which the Government may have to the return of the entire advance grant if the Applicant shall have acted in bad faith or made any misrepresentations concerning the completion of the Project or the use of the advance grant.

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3. INTERMEDIATE GRANT REQUISITIONS.—(a) *Loans and Grants.*—In case the Government is to purchase Bonds, simultaneously with the delivery of the Bonds to and payment for the Bonds by the Government, or where Bonds are taken up and paid for in more than one installment, simultaneously with the delivery of and payment for the final installment, or at any subsequent time, if the Applicant has filed a requisition and if such requisition is accompanied by a signed certificate of purposes showing in reasonable detail the purposes for which the funds will be used and that such funds will be used for items properly included as part of the cost of the Project, the Government will make a grant of an amount representing the difference between any advance grant previously made and an amount equal to 25 per cent of said previously approved estimated cost of the Project. When the Project shall be approximately 70 per cent completed, as determined by the Administrator, the Government will honor a requisition for a second intermediate grant in an amount equal to the difference between the aggregate amount of grant payments theretofore made and 35 per cent of said previously approved

estimated cost of the Project. To the end that payment of such second intermediate grant requisition may be expedited, the Applicant may file such requisition when the Project is approximately 50 per cent completed.

No intermediate grant requisition will be honored if the Applicant shall not have deposited in the Construction Account (hereinafter described) such sums as may have been required in the Offer to be so deposited in addition to the funds made or to be made available by the Government.

(b) Grants Only.—In case the Government is to make a grant only, at any time after the Applicant has deposited in the Construction Account its share of the cost of the Project (herein called "Applicant's Funds"), if the Applicant has so requisitioned and if such requisition is accompanied by a signed certificate of purposes in which appear in reasonable detail the purposes for which the funds will be used, the Government will make a grant of an amount representing the difference between the advance grant, if any, and an amount equal to 25 per cent of said previously approved estimated cost of the Project. When the Project shall be approximately 50 per cent completed the Applicant may file its second intermediate grant requisition for an amount equal to the difference between the aggregate amount of grant payments theretofore made and 35 per cent of said previously approved estimated cost of the Project, but said second intermediate grant requisition will not be honored until the Project is approximately 70 per cent completed, as determined by the Administrator.

(c) In General.—Intermediate grant requisitions in all cases will be honored only if the documents necessary to support such requisitions are complete and work on the Project has progressed in accordance with the provisions of the Offer and the terms and conditions.

4. **FINAL GRANT PAYMENT.**—At any time after the completion of the Project, the Applicant may file a re-

quisition requesting a final grant payment which, together with all previous payments on account of such grant, shall be an amount not in excess of 45 per cent of the actual cost of the Project, *as determined by the Administrator*; but not to exceed, in any event, the amount of the grant set forth in the Offer. The final grant requisition will be honored if the documents necessary to support it are complete and work on the Project has been completed in accordance with the Offer and the terms and conditions.

In the determination of the final grant payment, costs or charges of a continuing nature not incurred by the Applicant specifically for the Project will not be allowed.

5. **CONSTRUCTION ACCOUNT.**—A separate account or accounts (herein collectively referred to as the "Construction Account") will be set up in a bank or banks which are members of the Federal Deposit Insurance Corporation. The advance grant payment, the intermediate grant payments, the proceeds from the sale of the Bonds (exclusive of accrued interest), Applicant's Funds, the final grant payment and any other moneys which shall be required in addition to the foregoing to pay the cost of constructing the Project will be deposited in the Construction Account promptly upon the receipt thereof. All accrued interest paid by the Government at the time of delivery of any Bonds will be paid into a separate account (herein referred to as the "Bond Fund"). Payments for the construction of the Project will be made only from the Construction Account.

6. **DISBURSEMENT OF MONEYS IN CONSTRUCTION ACCOUNT.**—Moneys in the Construction Account will be expended only for such purposes as shall have been previously specified in a signed certificate of purposes filed with and accepted by the Government. After all costs incurred in connection with the Project have been paid, if any Bonds are then held by the Government, all

moneys remaining in the Construction Account will be used to repurchase Bonds or will be transferred to the Bond Fund.

7. **USE OF MONEYS IN BOND FUND.**—Moneys in the Bond Fund will be expended solely for the purpose of paying interest on and principal of Bonds.

PART III.—CHANGE FROM LOAN AND GRANT TO GRANT ONLY.

1. **TERMS AND CONDITIONS APPLICABLE TO LOANS AND GRANTS AND GRANTS ONLY.**—(a) The terms and conditions are applicable in cases where the Government has offered to make a loan and a grant or to make a grant only or to make a loan only. If the Offer is for a loan only, the provisions of the terms and conditions relating to grants shall have no application.

(b) If, after the Applicant has accepted the Offer to make a loan and a grant, the Applicant determines to sell all the Bonds to purchasers other than the Government on terms at least as favorable as those offered by the Government, the Applicant may do so without obtaining the Government's consent thereto.

(c) If, before or after the Government has honored the first loan requisition, the Applicant determines to sell to purchasers other than the Government a portion of the Bonds, the consent of the Administrator to such sale will first be obtained to the end that the maturities of the Bonds to be purchased by the Government shall be satisfactory to the Administrator.

(d) If, after the Applicant has accepted the Offer to make a loan and a grant, a grant only is desired, because the Applicant has sold the Bonds to purchasers other than the Government or has otherwise provided its share of the cost of the Project, the Applicant will immediately notify the Administrator, and the Offer to make a loan and grant will remain effective for a grant

only, and the terms and conditions will remain equally applicable.

PART IV—CONSTRUCTION TERMS AND CONDITIONS.

1. PREREQUISITES TO GOVERNMENT'S OBLIGATION.

—The Government shall be under no obligation to the Applicant to take up and pay for any Bonds or to make any grant:

(a) *Submission to State Director.*—If the Applicant shall not submit to the State Director of the Federal Emergency Administration of Public Works, his duly authorized representative, or any other person designated by the Administrator to perform the duties and functions of the State Director (hereinafter referred to as the "State Director") :

(1) two copies of proposed contract documents relating to the Project, before bids are invited for the particular contract;

(2) all proposed wage rate determinations referred to in the second sentence of Paragraph 9 of this Part IV, before such determinations are made;

(3) a written statement concerning the proposed award of each contract relating to the Project, before an award is made;

(4) all sets of executed contract documents relating to the Project and four sets of conformed copies thereof, before any work, service, material or equipment is performed or furnished thereunder;

(5) a written statement concerning the proposed award of each subcontract relating to the Project, before the award thereof is approved;

(6) a written statement concerning the

proposed assignment of any interest in or part of any contract relating to the Project, before an assignment thereof is approved;

(7) a written statement concerning each proposed extra, change, or additional work order intended to affect any contract relating to the Project, before such order is issued;

(8) a written statement concerning, and the pertinent plans and specifications for, any work for which the Administrator has waived the applicable provisions of the terms and conditions so as to permit the Applicant to perform such work otherwise than by contract, before such work is so performed;

(9) all proposed decisions referred to in the second sentence of Paragraph 10 of this Part IV, except decisions by the Board of Labor Review, before such decisions are made;

(10) a written statement concerning each architect or engineer whom the Applicant proposes to employ on the Project, before such architect or engineer is employed, together with one certified copy of each ordinance, resolution, order, or contract by which each architect or engineer is employed by the Applicant for work upon or in connection with the Project; and

(11) such other data, reports, records, and documents relating to the Project as the State Director may require;

in order that the State Director may examine the same and promptly advise the Applicant whether, in his opinion, the same are in compliance with applicable Federal statutes, the Offer, and the terms and conditions;

(b) Procedure after Submission.—If the Applicant, after having submitted to the State Direc-

tor the matters mentioned in sub-Paragraph (a) of this Paragraph, shall have proceeded without having been advised by the State Director to do so;

(c) *Undue Delay in Construction.*—If the Applicant shall not cause the construction of the Project to be commenced and continued with all practicable dispatch in a sound and efficient manner and in accordance with the plans and specifications;

it being the purpose of sub-Paragraphs (a) and (b) of this Paragraph to insure that the Applicant will be fully advised before it takes any step which might, in the opinion of the State Director, violate applicable Federal statutes, the Offer, or the terms and conditions, and to eliminate thereby the possibility that the Applicant will be responsible for a violation which would render it impossible for the Government to make the grant or loan or which might otherwise result in a delay in the construction of the Project.

2. *CONSTRUCTION BY CONTRACT.*—All work on the Project will be done under contract. The Applicant will give every opportunity for free, open, and competitive bidding for each and every construction, material, and equipment contract. The Applicant will give such publicity to advertisements or calls for bids by it for the furnishing to it of work, labor, materials, and equipment as will provide adequate competition and the award of each contract therefor will be made to the lowest responsible bidder as soon as practicable: *Provided*, That in the selection of equipment or materials the Applicant may, in the interest of standardization or ultimate economy, if the advantage of such standardization or such ultimate economy is clearly evident, award a contract to a responsible bidder other than the lowest in price.

3. *CONTRACT SECURITY.*—The Applicant will require that each construction contractor shall furnish a bond in an amount at least equal to 100 per cent of his

contract price as security for the faithful performance of his contract and for the payment of all persons performing labor and furnishing materials in connection therewith: *Provided*, That if applicable State or Territorial law requires a separate bond for the protection of laborers and materialmen, the Applicant will require that each such contractor shall furnish a bond in the amount above-stated for the faithful performance of his contract and a separate bond in an amount at least equal to 50 per cent of his contract price for the payment of all persons performing labor and furnishing materials in connection with his contract.

4. **CONTRACTORS' INSURANCE.**—The Applicant will require that each construction contractor shall maintain during the life of his contract, insurance as follows:

(a) *Compensation Insurance.*—Adequate Compensation Insurance for all of such contractor's employees who will be engaged in work at the site of the Project and, if any part of such contractor's contract is sublet, the contractor will require his subcontractor to maintain such insurance for all of the subcontractor's employees who will be so engaged unless the latter's employees are protected by the principal contractor's Compensation Insurance.

(b) *Liability Insurance.*—Adequate Public Liability and Property Damage Insurance to protect such contractor and all of his construction subcontractors from claims for damages for personal injury, accidental death, and to property, which may arise from operations under his contract, whether such operations be by himself or by any such subcontractor or by anyone directly or indirectly employed by either of them.

5. **QUALIFICATIONS FOR EMPLOYMENT.**—The Applicant will require that no person under the age of sixteen (16) years and no convict labor shall be employed on the Project. The Applicant will require that no person whose age or physical condition is such as to make his

employment dangerous to his health or safety or to the health and safety of others shall be employed on the Project: *Provided*, That this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform. The Applicant will require that there shall be no discrimination because of race, creed, color, or political affiliations, in the employment of persons for work on the Project. The Applicant will require that all employees engaged in work on the Project shall have the right to organize and bargain collectively through representatives of their own choosing, and that such employees shall be free from interference, restraint, and coercion of employers in the designation of such employees' representatives, in self-organization, and in other concerted activities of such employees, for the purpose of collective bargaining or other mutual aid or protection, and that no person seeking employment on the Project and no person employed thereon shall be required as a condition of initial or continued employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of such person's own choosing.

6. LABOR PREFERENCE AND EMPLOYMENT SERVICES.

—The Applicant will require that with respect to all skilled, semi-skilled, and unskilled workers employed on the Project:

(a) Preference in employment shall be given to persons from the public relief rolls where such persons are available and qualified to perform the work to which the employment relates, and

(b) To the fullest extent possible workers required for the Project and appropriate to be secured through employment services shall be chosen from the list of qualified workers submitted by local employment agencies designated by the United States Employment Service: *Provided*, That union work-

ers, skilled, semi-skilled, and unskilled, shall not be required to register at such local employment agencies but, if such workers are desired by the employer, they shall be obtained through union locals in a customary manner which will insure compliance with subparagraph (a) of this Paragraph 6. In the event, however, that employers who wish to employ union workers are not furnished with qualified workers by the union locals within 48 hours (Sundays and holidays excluded) after request is filed by the employer, all workers shall be chosen from lists of qualified workers submitted by local agencies designated by the United States Employment Service.

7. **NONDISCRIMINATION.**—The Applicant will require that, except as specifically provided above, workers who are qualified by training and experience and who, as above outlined, are referred for work on the Project, shall not be discriminated against on any grounds whatsoever.

8. **HOURS OF WORK.**—The Applicant will require that except in—

(a) Emergencies, which are defined as unforeseen occurrences and combinations of circumstances involving the public welfare or the protection of work already done on the Project or which endanger life or property, and call for immediate action or remedy; or

(b) Special and unusual circumstances rendering it infeasible or impracticable to require adherence to the applicable limitations of hours herein set forth,

skilled, semi-skilled, and unskilled workers employed upon the Project shall not be permitted to work thereon more than 8 hours per day nor more than 40 hours per week: *Provided*, That the limitations of hours herein

set forth shall not apply to executive, supervisory, administrative, clerical, or other nonmanual workers¹ as such.

9. **WAGE RATES.**—The Applicant will require that minimum wage rates for employees in each trade and occupation engaged in work on the Project will be determined as required by applicable State or Territorial law. In the absence of such State or Territorial law, the Applicant will determine, prior to inviting bids for a construction contract, the minimum hourly wage rates for each such trade and occupation under such contract. Such minimum hourly wage rates will be determined (see Paragraph 1 (a) (2) of this Part IV) in accordance with rates prevailing for work of a similar nature in the locality in which the Project is to be constructed. The Applicant will also require that all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned shall be posted at appropriate conspicuous points on the site of the Project. Unless otherwise required by State or Territorial law, wage rates need not be established for executive, supervisory, administrative, clerical, or other nonmanual workers,¹ as such.

10. **CLAIMS AND DISPUTES PERTAINING TO CLASSIFICATION OF LABOR.**—Where there is a State or Territorial law requiring the determination of claims and disputes pertaining to the classification of labor employed on the Project, such claims and disputes will be handled in accordance with such law. In the absence of such law, claims and disputes pertaining to the classification of labor employed on the Project will be decided (see Paragraph 1 (a) (9) of this Part IV), by the Applicant: *Provided*, That instead of such claims and disputes being decided by the Applicant, both the parties concerned may, if they so agree and if the Applicant also agrees,

1. For example, Camp assistants, cooks, policemen, store-keepers, time-keepers, watchmen, waterboys, and messengers.

submit such claims and disputes to the Administrator who may, in his discretion, refer said claims and disputes to the Board of Labor Review of the Federal Emergency Administration of Public Works for decision.

11. **PAYMENT OF EMPLOYEES.**—The Applicant will require that each construction contractor and construction subcontractor shall pay each of his employees engaged in work on the Project in full (less deductions made mandatory by law) in cash and not less often than once each week.

12. **CONVICT-MADE MATERIALS.**—The Applicant will require that no materials manufactured or produced in a penal or correctional institution be incorporated into the Project.

13. **DOMESTIC AND FOREIGN MATERIALS.**—The Applicant will require that only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States of America, and that only such manufactured articles, materials, and supplies as have been manufactured in the United States of America substantially all from articles, materials, or supplies, mined, produced, or manufactured, as the case may be, in the United States of America, shall be employed in the construction of the Project: *Provided*, That the Applicant may, if it so desires, request the Administrator to waive the foregoing restrictions so as to permit the purchase of foreign articles, materials, or supplies, if the use of domestic articles, materials, or supplies is impracticable, or if the foreign articles, materials, or supplies are lower in cost after the following differentials are applied in favor of the domestic articles, materials, or supplies:

.

14. **ACCIDENT PREVENTION.**—The Applicant will require that precaution shall be exercised at all times for the protection of persons (including employees) and property, that the safety provisions of applicable laws,

building and construction codes shall be observed, and that machinery, equipment, and all hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

15. **INSPECTION.**—The Applicant will require that the Administrator and his authorized representatives and agents shall be permitted and will itself permit them, to inspect all work, materials, pay rolls, records of personnel, invoices of materials, and other relevant data and records and the Applicant will submit, to the Administrator's authorized representative or agent such evidence as to the quality of materials as such representative or agent may require. The Applicant will provide and maintain or will require that there shall be provided and maintained during the construction of the Project adequate facilities at the site thereof for the use of the Administrator's representatives or agents assigned to the inspection of the Project.

16. **SIGNS.**—The Applicant will cause to be erected on the site of the Project at points and in positions to be designated by the Administrator's representative or agent assigned to the inspection of the Project, signs in such quantity and of such dimensions as will be designated by the State Director, which signs will bear the legend:

P. W. A.

FEDERAL EMERGENCY

ADMINISTRATION OF PUBLIC WORKS.

.....
(Description of Project)

PROJECT NO.

17. **CONSTRUCTION REPORTS.**—The Applicant will require that there shall be submitted to it by each con-

struction contractor and will, in turn, submit to the Administrator's authorized representative or agent, schedules of the costs and quantities of materials and of other items, and that such schedules shall be in such form and shall be supported as to correctness by such of the estimates upon which they are based as such representative or agent may require. The Applicant will also require that there shall be submitted to it by each such contractor and will, in turn, submit as above-stated, the following records on forms to be supplied by the Government:

(a) Detailed Estimate, and (b) Periodical Estimates for Partial Payment.

18. **REPORTS TO U. S. DEPARTMENT OF LABOR.**—The Applicant will require that each construction contractor shall furnish to the United States Department of Labor, as early as practicable, the names and addresses of all of his construction subcontractors. The Applicant will also require that each such contractor and subcontractor shall report monthly to said Department, not later than the 5th day following the close of each calendar month, on forms and in accordance with instructions to be supplied by said Department, the number of persons directly employed under his contract who, during the particular calendar month, were on his pay rolls, the aggregate amount of each of said pay rolls, the man-hours worked, and the total expenditures for materials, which expenditures shall be itemized.

19. **REPORTS TO ADMINISTRATOR.**—The Applicant will report monthly directly to the Administrator not later than the 5th day following the close of each calendar month, on forms and in accordance with instructions to be supplied by the Government, the total number of persons who were directly employed on the Project during the particular calendar month.

20. **PAY ROLLS OF CONTRACTORS AND SUBCONTRACTORS.**—The Applicant will require that each construction

contractor and each construction subcontractor shall prepare his pay rolls on forms prescribed and in accordance with instructions to be furnished by the Administrator; that not later than the 7th day following the payment of the wages, each such contractor shall transmit to such office as may be designated by said Administrator a certified legible copy and two conformed copies of each such pay roll; that each such pay roll shall be sworn to in accordance with the "Regulations Issued Pursuant to So-Called Kick-Back Statute", which Regulations are set forth in Part V hereof; and that each such contractor and subcontractor shall submit reports on forms as and when required by said Administrator, covering the purchases of and requisitions for materials, together with such other information as may be required to determine the progress and status of work on the Project.

21. **PROJECT DATA AND RECORDS.**—Promptly following the preparation of periodical pay rolls of construction contractors and of construction subcontractors, the Applicant will furnish the Administrator's authorized representative or agent with such number as may be required of certified copies of such pay rolls, on forms to be supplied by the Government. Such certified copies of such pay rolls will be accompanied by substantial proof that all bills for services rendered and materials supplied have been duly paid, and by such other data as such representative or agent may require. The Applicant will keep a record of Project costs in accordance with the classification of such costs used by the Administrator. The Applicant will furnish such information and data concerning the construction, cost, and progress of work on the Project (including copies of proposed and executed contract documents) as such representative or agent may require.

22. **PAYMENT.**—(a) Not later than the 15th day of each calendar month, the Applicant will make partial

payment to each construction contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month by the particular contractor, but will retain at least 10 per cent of the amount of each such estimate until final completion and acceptance of all work covered by the particular contract.

(b) The Applicant will require that each such contractor shall pay:

(1) For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered,

(2) For all materials, tools, and other expendible equipment, to the extent of 90 per cent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the Project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used, and

(3) To each of his construction subcontractors, not later than the 5th day following each payment to such contractor, the respective amounts allowed such contractor on account of the work performed by such subcontractors, to the extent of each such subcontractor's interest therein.

23. NAMING PROJECT. — The Applicant will not name the Project for any living person.

**PART V—KICK-BACK STATUTE AND
REGULATIONS.**

1. KICK-BACK STATUTE.—The so-called Kick-Back Statute is Public, No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948), and reads as follows:

AN ACT To effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

SEC. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week.

2. REGULATIONS ISSUED PURSUANT TO SO-CALLED KICK-BACK STATUTE. — Pursuant to the provisions of Public, No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948), concerning rates of pay for

labor, the Secretary of the Treasury and the Secretary of the Interior have jointly made the following regulations:

SECTION 1. (This section quotes the Kick-Back Statute.)

SECTION 2. Each contractor and subcontractor engaged in the construction, prosecution, or completion of any building or work of the United States or of any building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, shall furnish each week an affidavit with respect to the wages paid each employee during the preceding week. Said affidavit shall be in the following form:
State of.....

County....., ss:

I,..... (name the party signing affidavit),..... (Title), do hereby certify that I am the employee of..... (name of contractor or subcontractor), who supervises the payment of the employees of said contractor (subcontractor); that the attached pay roll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor (subcontractor) for the construction of..... (project), for the weekly pay roll period from the.... day of....., 193...., to the day of....., 193....; that no rebates or deductions from any wages due any such person as set out on the attached pay roll have been directly or indirectly made; and that, to the best of my knowledge and belief, there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat or otherwise, induce or receive any deductions or rebates in any manner whatsoever from any sum paid or to be paid to any person at any time for

labor performed or to be performed under the contract for the above named project.

Sworn to before me this .. day of, 193...

.

Plaintiffs' Exhibit 76.

**Copy Conformed To
Executed Original
Dec. 29, 1938
Checked Martz
Legal Division, PWA**

P. W. 86575-3

**FEDERAL EMERGENCY ADMINISTRATION
OF PUBLIC WORKS**

**Washington, D. C.,
Dated: Dec. 31, 1938
Docket No. Pa. 2016-F**

**School District of the City of Pittsburgh,
Pittsburgh, Allegheny County, Pennsylvania.**

1. Subject to the Terms and Conditions (PWA Form No. 230, as amended to the date of this Offer), which are made a part hereof, the United States of America hereby offers to aid in financing the construction of a school building, including necessary equipment, the acquisition of necessary land, and the improvement of the grounds (all herein called the "Project"), by making a grant to School District of the City of Pittsburgh, Allegheny County, Pennsylvania (herein called the "Applicant"), in the amount of 45 percent of the cost of the Project upon completion, as determined by the Federal Emergency Administrator of Public Works (herein called the "Administrator"), but not to exceed, in any event, the sum of \$139,108.

2. By acceptance of this Offer the Applicant covenants to begin work on the Project as early as possible but in no event later than December 31, 1938, and to complete such Project with all practicable dispatch, and in any event by April 8, 1940.

3. This Offer is made subject to the express condition that, if the Administrator shall determine at any time that the Applicant has paid or agreed to pay, whether directly or indirectly, a bonus, commission or fee to any person, firm or corporation for attempting to procure an approval of the Applicant's application, or for alleged services in procuring or in attempting to procure such approval, or for activities of the nature commonly known as lobbying performed or agreed to be performed in connection with the application, then the Administrator shall have the right, in his discretion, to rescind this Offer and any agreements resulting herefrom, and, in the event of such rescission, the United States of America shall be under no further obligation hereunder.

4. The acceptance of this Offer by the Applicant shall effectuate a cancellation of the contract created by the acceptance of the Offer dated August 15, 1938, made by the United States of America to the Applicant: Provided, that the cancellation of such contract shall not impair or vitiate any acts performed or proceedings taken thereunder prior to such cancellation, but such acts or proceedings may be continued under the contract created by the acceptance of this Offer.

UNITED STATES OF AMERICA
Federal Emergency Administrator
of Public Works

(Sgd.) E. W. CLARK

For the

By

Assistant Administrator

EXTRACTS FROM THE MINUTES

OF A

**REGULAR MEETING OF THE BOARD OF PUBLIC
EDUCATION SCHOOL DISTRICT OF PITTSBURGH,
PENNSYLVANIA, HELD ON THE THIRD DAY OF
JANUARY, 1939.**

A regular meeting of The Board of Public Education of the School District of Pittsburgh, Pennsylvania, held pursuant to the foregoing call, was held on the third day of January, 1939.

The meeting was called to order by the President and on roll call the following answered present:

Mrs. Phillips, Mrs. Ridge

Messrs. Bialas, Fisher, Freese, Gerwig, Lewin,
Voegtly, Young and Aaron.

The following were absent:

Mrs. Chalfant

Messrs. Doyle, Murray, Reed

After discussion of the Offer of the United States of America to aid by way of grant in financing the construction and equipment of the Spring Garden Elementary School, the following Resolution No. "N" of January 3, 1939, and entitled "A Resolution Accepting the Offer of the United States to The Board of Public Education, School District of Pittsburgh, Pennsylvania, to Aid by Way of Grant in Financing the Construction and Equipment of the Spring Garden Elementary School", was presented by Dr. Lewin and read in full.

"N"**A RESOLUTION ACCEPTING THE OFFER OF THE UNITED STATES TO THE BOARD OF PUBLIC EDUCATION, SCHOOL DISTRICT OF PITTSBURGH, PA., TO AID BY WAY OF GRANT IN FINANCING THE CONSTRUCTION AND EQUIPMENT OF THE SPRING GARDEN ELEMENTARY SCHOOL.**

Be it resolved by The Board of Public Education, School District of Pittsburgh, Penna.,

SECTION 1. That the Offer of the United States of America to The Board of Public Education, School District of Pittsburgh, Pa., to aid by way of grant in financing the construction and equipment of the Spring Garden Elementary School, a copy of which Offer reads as follows:

"Washington, D. C.
December 31, 1938.

Docket No. Pa. 2016-F

School District of the City of Pittsburgh,
Pittsburgh, Allegheny County, Pennsylvania.

1. Subject to the Terms and Conditions (PWA Form No. 230, as amended to the date of this Offer), which are made a part hereof, the United States of America hereby offers to aid in financing the construction of a school building, including necessary equipment, the acquisition of necessary land, and the improvement of the grounds (all herein called the "Project"), by making a grant to School District of the City of Pittsburgh, Allegheny County, Pennsylvania (herein called the "Applicant"), in the amount of 45 percent of the cost of the Project upon completion, as determined by the Federal Emergency Administrator of Public Works (herein called the "Administrator"), but not to exceed, in any event, the sum of \$139,108.00.

2. By acceptance of this Offer the Applicant cove-

nants to begin work on the Project as early as possible but in no event later than December 31, 1938, and to complete such Project with all practicable dispatch, and in any event by April 8, 1940.

3. This Offer is made subject to the express condition, that, if the Administrator shall determine at any time that the Applicant has paid or agreed to pay, whether directly or indirectly, a bonus, commission or fee to any person, firm or corporation for attempting to procure an approval of the Applicant's application, or for alleged services in procuring or in attempting to procure such approval, or for activities of the nature commonly known as lobbying performed or agreed to be performed in connection with the application, then the Administrator shall have the right, in his discretion, to rescind this offer and any agreements resulting herefrom, and, in the event of such rescission, the United States of America shall be under no further obligation hereunder.

4. The acceptance of this Offer by the Applicant shall effectuate a cancellation of the contract created by the acceptance of the Offer dated August 15, 1938, made by the United States of America to the Applicant: Provided, that the cancellation of such contract shall not impair or vitiate any acts performed or proceedings taken thereunder prior to such cancellation, but such acts or proceedings may be continued under the contract created by the acceptance of this Offer.

UNITED STATES OF AMERICA
Federal Emergency Administrator
of Public Works

By E. W. CLARK (signed)

for the Assistant Administrator."

be and the same is hereby in all respects accepted.

SECTION 2. That said Board of Public Education, School District of Pittsburgh, Pa., hereby covenants as follows:

It is hereby covenanted that work on the project described in the Offer will be commenced as early as possible but in no event later than December 31, 1938, and will complete such Project with all practicable dispatch, and in any event by April 8, 1940.

SECTION 3. That said Board of Public Education, School District of Pittsburgh, Pa., agrees to abide by all the rules and regulations relating to such grant, a copy of which rules and regulations were annexed to the Government's Offer and made a part thereof.

SECTION 4. That C. L. Wooldridge, Superintendent of Buildings, be and is hereby authorized and directed forthwith to send to the Federal Emergency Administration of Public Works, three certified copies of this Resolution and three certified copies of the proceedings of this regular meeting in connection with the adoption of this Resolution, and such further documents or proofs in connection with the acceptance of said Offer as may be requested by the Federal Emergency Administration of Public Works.

MARCUS AARON
President

Attest:
H. W. CRAMBLET
Secretary

[SEAL]

The above Resolution was seconded by Mr. Fisher and was adopted with the following voting Yes:

Mrs. Phillips, Mrs. Ridge
Messrs. Fisher, Freese, Gerwig, Lewin, Voegtly,
Young and Aaron.

and the following voting Nay:

Mr. Bialas

The President thereupon declared the said Resolution carried and he and the Secretary thereupon signed said Resolution in approval thereof.

Plaintiffs' Exhibit 107.
CITY OF PITTSBURGH, PA.

Voucher No. 23713
Bond Fund
PWA

Oct 27th 1939

\$727.59

SEVEN HUNDRED TWENTY SEVEN & 59/100 DOLLARS

In Account With

DEVLIN ELECTRIC CONSTRUCTION COMPANY

206 STANWIX ST — PITTSBURGH PA

P. W. A.

Date of

Invoice Amount

10-25-39

727 59

DIC 7740

CA 136-19

—DOCKET 1987 — EST #1 —

Journal

Posted

2

I. M. Q.

Inspected and Passed for Payment

By

By

Approved for Payment

By

DEPARTMENTAL INVOICE—To be transmitted to Controller in duplicate.

6744

CITY OF PITTSBURGH, DR.

Department Public Works Bureau of Engineering
to Devlin Electric Construction Company
206 Stanwix Street, Pittsburgh, Penna.

1939

Date	Item	Code Acct.	Amount	Total
Oct. 23	Construction of a Recreation Building at West Penn Playground. Contract No. 6—Electric CURRENT ESTIMATE No. 1	136-19	727 59	727 59

LIQUIDATED

Project Pa. 1987-F
Controllers No. 7740

P. W. A.

Original
Contract No. 7740
Pay 727.59
Liquidate 727.59
Examined H
Symbol No. 136-19
Paid by Voucher No. 23713

Approved: C. D. MCCARTHY, S
Chief Accountant

Certified Correct:

NATHAN SCHEIN

Title—Senior Designing Engineer

Approved for Payment:

F. M. ROESSING

Head of Department

By Director—DPW

Charge 136-19

Project Pa. 1987-F

Controllers No. 7740

CITY OF PITTSBURGH

DEPARTMENT OF PUBLIC WORKS

Bureau of Engineering

Oct 25 1939

OK Davis

CURRENT ESTIMATE No. 1

For Construction of a Recreation Building at West Penn Playground.

Contract No. 6—Electric

Estimated Cost \$10,000.00

Bond \$ 9,832.00

Contract Price \$9,832.00

Item No. 1

Description

Bond

Material Stored:

Conduit

Inspector Hill

Less 10 percent

Devlin Electric Construction Company, Contractor

Unit

Quantity

L. S.

Quantity

Accepted

Unit

Price

Cost

658.43

\$808.43

\$ 80.84

Total Estimate

Total Estimate less 10 percent

Deduct previous Estimate

Current Estimate, showing amount due Contractor

I certify that the work has been done in strict accordance with Plans, Specifications and Ordinances relative to the same and that the Contractor has fully complied with all the conditions of the contract.

H. K. KEIL,

Senior Assistant Engineer

NATHAN SCHEIN,

Division Sup't or Engineer

Senior Designing Engineer

The above estimate and statements are believed to be correct, and payment of \$727.59 is recommended for approval.

Checked and recommended for approval:

10-25-39

J. B. MCCANN

Departmental Checker

10-24-39

CARL M. VETTER

Chief Engineer, B. of E.

Oct 25 1939

C. D. MCCARTHY S

Chief Accountant

Oct 25 1939

JOHN J. CROSSETT,

Chief Engineer, D. P. W.

Approved 10/28/39

F. M. ROESSING

Director

23713

CURRENT ESTIMATE No. 1

FOR

**Construction of a Recreation Building
at West Penn Playground.**

Contract No. 6—Electric

**Devlin Electric Construction Co.
Contractor**

\$727.59

CITY OF PITTSBURGH, ss:

Personally appeared before me, the undersigned, who, being duly sworn, doth depose and say that the within Estimate is correct and true in all particulars, and the amounts contained therein are justly due to the parties therein shown, under the terms and conditions of the contract relative thereto, to the best of his knowledge and belief.

H. K. KEIL

Senior Assistant Engineer

**Sworn and subscribed this 24
day of Oct. 1939.**

**S. A. EARDLEY, P. C.
Controller.**

P. W. A. Form No. I-23
Revised February 1939

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

190

PERIODICAL ESTIMATE FOR PARTIAL PAYMENT NO. 1, DOCKET NO. PA. 1987-F
Sheet 1 of 1 sheets
Contract No. 6

For the period August 16, 1939 to September 30, 1939, inclusive.

Location West Penn Plgd., Pittsburgh State Pennsylvania Type of project Recreation
Owner's name and address City of Pittsburgh Building—Electric
City-County Building Contract price, \$9,832.00
Pittsburgh, Penna. (Lump sum)

Contractor's name and address Devlin Electric Construction Co. Estimated Cost, \$
206 Stanwix Street (Unit price)
Pittsburgh, Penna. Estimated Cost, \$
(Force account)

DETAILED ESTIMATE

WORK PERFORMED TO DATE

Item No.	Number and Kind of Units	Unit Price	Estimated Cost	Number of Units	Amount Earned to Date	Value of Uncom- pleted Work	Per Cent Com- plete
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Completed Item:							
1 L. S.		150.00	150.00	1	150.00		100
Future Item:							
2 to 10 incl.:							
Material Stored:			9,682.00		658.43	9,682.00	
Totals—			9,832.00		808.43	9,682.00	1.5

Plaintiffs' Exhibit 107.

(Reverse Side)

NOTICE.

The project to which the contract herein referred to relates is a non-Federal project, the construction of which the United States of America, through the Federal Emergency Administration of Public Works, is aiding the owner in financing. In this connection, therefore, attention is directed to the following:

Section 9 of the Emergency Relief Appropriation Act of 1935, reads as follows:

"Any person who knowingly and with intent to defraud the United States makes any false statement in connection with any application for any project, employment, or relief aid under the provisions of this joint resolution, or diverts, or attempts to divert, or assists in diverting for the benefit of any person or persons not entitled thereto, any moneys appropriated by this joint resolution, or any services or real or personal property acquired thereunder, or who knowingly, by means of any fraud, force, threat, intimidation, or boycott, deprives any person of any of the benefits to which he may be entitled under the provisions of this joint resolution, or attempts so to do, or assists in so doing, shall be deemed guilty of a misdemeanor and shall be fined not more than \$2,000 or imprisoned not more than 1 year, or both."

Section 35 of the U. S. Criminal Code, as amended, reads as follows:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall

knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both."

**CERTIFICATE OF THE CONTRACTOR OR HIS DULY
AUTHORIZED REPRESENTATIVE**

To the best of my knowledge and belief, I certify that all items, units, quantities, and prices of work and material shown on the face of Sheets No. of this Periodical Estimate are correct; that all work has been performed and materials supplied in full accordance with the terms and conditions of the corresponding construction contract documents between City of Pittsburgh and
(Owner)

Devlin Electric Constr. Co., dated 8-7-39, and all authorized changes thereto;

that the following is a true and correct statement of the contract account up to and including the last day of the period covered by this estimate and that no part of the "total amount due" has been received:

(a) Total amount earned (col. 6)	\$808.43
(b) Retained percentage 10%	\$ 80.84
(c) Total earned less retained percentage	\$727.59
(d) Total previously approved	\$
(e) Amount due this estimate	\$727.59

- (f) Unpaid from previous estimates..... \$.....
(g) Total amount due..... \$727.59

I further certify that all claims outstanding against Devlin Electric Constr. Co. for labor, materials, and expendable equipment employed in the performance of said contract have been paid in full in accordance with the requirements of said contract.

Contractor Devlin Electric Construction Co.
J. C. Devlin
Title Owner

Date October 3, 1939

**CERTIFICATE OF THE OWNER'S SUPERVISING ENGINEER
OR ARCHITECT IN CHARGE**

I certify that I have verified this Periodical Estimate, and that to the best of my knowledge and belief it is a true and correct statement of work performed and materials supplied by the contractor, and that the contractor's certified statement of his account and the amount due him is correct and just, and that all work and material included in this Periodical Estimate have been performed in full accordance with the terms and conditions of the corresponding construction contract documents and authorized changes thereto.

Name City of Pittsburgh
By Nathan Schein
Title: Senior Designing Engineer

Date October 21, 1939

**CERTIFICATE OF THE PUBLIC WORKS ADMINISTRATION
ENGINEER INSPECTOR IN CHARGE**

I certify that all work and material included in this Periodical Estimate have been inspected by me or my duly authorize assistants and have been found to com-

ply with the terms and conditions of the corresponding construction contract documents and authorized changes thereto.

Name John B. Tew

By John B. Tew

Title: Resident Engineer Inspector

Date October 24, 1939

REMARKS

Material Stored:

Keys Electric Company

Conduit

\$ 658.43.

*WARNING TO CONTRACTOR. If no claims are outstanding against the contractor, the clause "except such outstanding claims as are listed below or on the attached sheet, etc." must be deleted from the last paragraph of the contractor's certificate before the contractor signs it.

U. S. Government Printing Office 16-5773

Plaintiffs' Exhibit 150.

**FEDERAL WORKS AGENCY
PUBLIC WORKS ADMINISTRATION
WASHINGTON**

**In Reply Please Refer To
Admin. B-11
Docket No. Pa. 1692-DS
School District
Borough of Braddock**

Sept. 19, 1940

**Mr. William C. Evans,
Superintendent,
Braddock Public Schools,
Braddock, Pennsylvania.**

My dear Mr. Evans:

Receipt is acknowledged of your letter of September 10, 1940, in regard to the payment of additional grant on the above-mentioned project.

You are advised that the amount of \$2,446.61, retained from this grant payment, cannot be paid to the School District until it has been determined what action is to be taken by the District in regard to the alleged collusion in connection with the bids submitted for the electrical contract on this project. As soon as this matter has been satisfactorily settled, consideration will be given to the payment of any additional grant allowable.

You have also requested reinstatement in the cost upon which grant is computed of certain construction costs which were excluded from grant participation. On the basis of the information available to this office these items are not eligible for reinstatement. If, however, the School District has additional information which it considers justification for the inclusion of these costs, such data may be submitted to this Administration. You may be assured that any information which you care to sub-

mit will be given careful consideration to determine its eligibility for reinstatement.

Sincerely yours,
J. J. MADIGAN
Executive Officer

CC: Regional Director, Region No. 1

Plaintiffs' Exhibit 169.

**RESOLUTION OF COUNCIL OF THE BOROUGH OF
CRAFTON, ALLEGHENY COUNTY,
PENNSYLVANIA**

IN MATTER OF AWARD OF CONTRACTS INVOLVED IN CONSTRUCTION OF MUNICIPAL BUILDING IN THE BOROUGH OF CRAFTON BEING IDENTIFIED AS PROJECT PA. 1703 DS

BE IT RESOLVED, by Council of the Borough of Crafton, Allegheny County, Pennsylvania, in Regular Meeting assembled this 17th day of December, 1937.

THAT WHEREAS, after full and complete preparation of plans and specifications for a new Municipal Building in the Borough of Crafton, Allegheny County, Pennsylvania, identified as Project Pa. 1703 DS, and after due and legal notice to bidders as to each of the four separate contracts involved in the construction of said Project, fixing and determining the time for opening bids to be 8:00 o'clock P. M. on Friday, the 3rd day of December, 1937, each and all of the bids submitted were, at the time above fixed, before Council of the Borough of Crafton, in meeting assembled, opened, tabulated, examined and fully considered and the lowest bidder, as to each of the four separate contracts, which together provide for the complete construction of said Project or Municipal Building, and the amount of said respective lowest bids were found and determined to be as follows:

	<u>Name of Bidder</u>	<u>Amt. of Bid</u>
(a) Contract for general construction:	Henry Busse	\$59,980.00
(b) Contract for heating and ventilating:	Eastern Plumbing & Heating	\$ 4,190.00
(c) Contract for plumbing:	George H. Soffel Co.	\$ 4,844.00
(d) Contract for electrical work:	Diamond Electric Co.	\$ 5,735.00

AND WHEREAS, bond or certified check in the respective amounts required to insure good faith of the bidders, has been delivered with each of said lowest bids, to the Council of the Borough of Crafton, and

WHEREAS, each of said four lowest bidders has delivered to Council of the Borough of Crafton, a sworn statement as to the financial responsibility, the technical qualification and other pertinent data showing the ability of each of said lowest bidders to carry out and complete his or its contract, according to the plans and specifications governing and controlling the same.

NOW, THEREFORE, BE IT RESOLVED,

THAT, subject to the full and complete compliance by each of the said four contractors, with all the terms and conditions governing and controlling the award of each of said respective contracts, that the respective bids of the lowest bidders as to each of said four contracts above set forth, be and the same are hereby accepted and said contracts are hereby awarded as follows:

(a) The contract for general construction is hereby awarded to Henry Busse, at his bid of \$59,980.00.

(b) The contract for heating and ventilating is hereby awarded to Eastern Plumbing and Heating Company, at its bid of \$4,190.00.

(c) The contract for plumbing is hereby awarded to George H. Soffel Company, at its bid of \$4,844.00.

(d) The contract for electrical work is hereby awarded to Diamond Electric Company, at its bid of \$5,735.00.

BE IT FURTHER RESOLVED, That before entering into the performance of any of said contracts, each of the said contractors shall give his or its bond in a sum equal to the amount of his or its contract and its bond in the amount of fifty per cent to insure performance of labor involved in his or its contract with surety or sureties to be approved by Council of the Borough of Crafton.

Plaintiffs' Exhibit 190.

**IN RE: PROJECT DOCKET NO. PA. 1575-D
FILTRATION PLANT
BOROUGH OF BRADDOCK, PA.
CONTRACT NO. 5—ELECTRICAL EQUIPMENT
BY D. R. ROSS ELECTRIC COMPANY OF
517 ARROTT BUILDING
PITTSBURGH, PENNSYLVANIA**

RELEASE

WHEREAS, D. R. Ross Electric Company of Pittsburgh, Pennsylvania, entered into a certain written contract known as Contract No. 5, Electrical Equipment, Project Docket No. Pa. 1575-D, dated the 3rd day of March 1937, with the Borough of Braddock, a municipal corporation of the County of Allegheny, State of Pennsylvania, for the construction and erection of Electrical Equipment for the Filtration Plant at Braddock Borough Water Works, and,

WHEREAS, There remains due and owing to the said D. R. Ross Electric Company under the terms of the said contract the sum of ONE THOUSAND ONE HUNDRED TWENTY THREE DOLLARS and NINETY TWO CENTS (\$1123.92); now therefore,

KNOW ALL MEN BY THESE PRESENTS, that D. R. Ross Electric Company, for and in consideration of payment by the Borough of Braddock to it of the aforesaid sum of ONE THOUSAND ONE HUNDRED TWENTY THREE DOLLARS and NINETY TWO CENTS (\$1123.92) as well as for other good and valuable considerations, has released and forever discharged, and by these presents, for itself, successors and assigns, does release and forever discharge the said Borough of Braddock, its successors and assigns, from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, specialties, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims and demands, whatsoever, in law or equity, or otherwise howsoever, which against the said Borough of Braddock ever existed or does exist in favor of the said D. R. Ross Electric Company, its successors and assigns, in consequence of its performance of the terms of the said contract hereinbefore described.

Signed, sealed and delivered this 1st day of July
A. D. 1938.

D. R. Ross,
Owner.

Attest:

Subscribed and sworn to before me this 1st day of
July, 1938.

A. E. GLAD,
Notary Public.

[SEAL]

In and for the County of Los Angeles, State of California.

My commission expires April 27, 1940.

D. R. ROSS ELECTRIC COMPANY
ENGINEERING - INSTALLATION - MAINTENANCE
ABBOTT BUILDING
PITTSBURGH, PA.

JUNE 24, 1938

Borough of Braddock
Allegheny County
Pennsylvania
Attention: G. M. Dillon

RE: Project Docket No. Pa. 1575-D

Gentlemen:

This is to certify that all debts of labor, suppliers of materials and sub-contractors and all debts incident to and growing out of our contract with the Borough of Braddock on Project Docket No. Pa. 1575-D have been paid by the D. R. Ross Electric Company.

D. R. Ross Electric Company,
D. R. Ross.

Subscribed to before me this 1st day of July, 1938.
DRR:DRA **A. E. GLAD,**
[SEAL] **Notary Public.**
In and for the County of Los Angeles, State of California.

My commission expires April 27, 1940.

Plaintiffs' Exhibit 213.

No. 177

**SCHOOL DISTRICT OF THE TOWNSHIP OF KENNEDY
McKees Rocks, Pa. Dec. 23rd 1936**

Pay to the order of

JOHN W. CRAIG ELECTRIC CO. \$109. 60/100

Registered 355088 \$109 and 60 cts Dollars

CHARLES E. HAAG

President

E. K. HAINES

Secretary

Charge to Construction Fund.

To THE BANK OF MCKEES ROCKS

60-363 McKees Rocks, Pa.

(Reverse Side)

John W. Craig Electric Co.

John W. Craig, Owner

PAY TO THE ORDER OF ANY BANK OR BANKER

4 8-30 or thru the Pittsburgh Clearing House D 8-30

Prior Endorsements Guaranteed

PITTSBURGH BRANCH

FEDERAL RESERVE BANK OF CLEVELAND

DEC. 24 1936

PAY TO THE ORDER OF

ANY BANK, BANKER OR TRUST CO.

Prior Endorsements Guaranteed

DEC 23 1936

WEST END BANK

Pittsburgh, Pa.

GEO. E. OSBORNE, Cashier

Pay to the Order of

ANY BANK BANKER OR TRUST CO.

Prior Endorsements Guaranteed

DEC 24 1936

FARMERS DEPOSIT NATIONAL BANK

Pittsburgh, Pa.

M. E. BOYLE, Cashier

8-64

8-64

8-11

8-11

**countersigned
F. B. REISDORF, Treasurer**

Plaintiffs' Exhibit 245.

P.W.A. Form No. 1-23
Revised February 1939

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

Sheet 1 of 1 sheets

PERIODICAL ESTIMATE FOR PARTIAL PAYMENT OF NO. 8, DOCKET NO. P.A. 1920-F

Contract No. 4 Elec.

For the period October 1, 1939 to October 31, 1939, inclusive.

Location West View

State Pennsylvania

Owner's name and address School District of the Borough
of West View, Penna.

Type of project

High School Bldg.

Contract price, \$36,650.00
(Lump sum)

Estimated cost, \$

(Unit price)

Estimated cost, \$

(Force account)

Contractor's name and address Fort Pitt Electric Company

600 Second Avenue, Pittsburgh, Pa.

DETAILED ESTIMATE			WORK PERFORMED TO DATE				
Item No. (1)	Number and Kind of Units (2)	Unit Price (3)	Estimated Cost (4)	Number of Units (5)	Amount Earned to Date (6)	Value of Uncompleted Work (7)	Per Cent Complete (8)
COMPLETED ITEMS							
1	37000 lin. ft.	.0605 ft.	550.00		550.00		100%
2	378 units	12.65 E.	14,992.20		14,992.20		100%
4	1 unit	24.40 E.	4,785.00		4,785.00		100%
6	31 units	61.75 E.	1,732.30		1,732.30		100%
7	40 units		756.65		756.65		100%
8	ACTIVE ITEMS		2,470.00		2,470.00		100%
3	92000 lin. ft.	.0605 ft.	5,568.72	91,080	5,513.04	55.68	99%
5	510 units	11.363 E.	5,795.13	459	5,215.62	579.51	90%
Sub-Totals			36,850.00		36,014.81	635.19	98.2%
C.O.	#1—30 units	65.54E.	1,966.25	30	1,966.25		100%
C.O.	#2—1 unit		22.00	1	22.00		100%
C.O.	#3—L.S.		168.00		168.00		100%
C.O.	#4—L.S.		752.00			752.00	0
Totals			39,558.25		38,171.06	1,387.19	96.4%

(Reverse Side)

NOTICE.

The project to which the contract herein referred to relates is a non-Federal project, the construction of which the United States of America, through the Federal Emergency Administration of Public Works, is aiding the owner in financing. In this connection, therefore, attention is directed to the following:

Section 9 of the Emergency Relief Appropriation Act of 1935, reads as follows:

"Any person who knowingly and with intent to defraud the United States makes any false statement in connection with any application for any project, employment, or relief aid under the provisions of this joint resolution, or diverts, or attempts to divert, or assists in diverting for the benefit of any person or persons not entitled thereto, any moneys appropriated by this joint resolution, or any services or real or personal property acquired thereunder, or who knowingly, by means of any fraud, force, threat, intimidation, or boycott, deprives any person of any of the benefits to which he may be entitled under the provisions of this joint resolution, or attempts so to do, or assists in so doing, shall be deemed guilty of a misdemeanor and shall be fined not more than \$2,000 or imprisoned not more than 1 year, or both."

Section 35 of the U. S. Criminal Code, as amended, reads as follows:

"Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall

knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both."

**CERTIFICATE OF THE CONTRACTOR OR HIS DULY
AUTHORIZED REPRESENTATIVE**

To the best of my knowledge and belief, I certify that all items, units, quantities, and prices of work and material shown on the face of Sheets No. of this Periodical Estimate are correct; that all work has been performed and materials supplied in full accordance with the terms and conditions of the corresponding construction contract documents between School District of the Boro. of West View and Fort Pitt Electric Co., dated

(Owner)

(Contractor)

Jan. 5, 1939, and all authorized changes thereto; that the following is a true and correct statement of the contract account up to and including the last day of the period covered by this estimate and that no part of the "total amount due" has been received:

(a) Total amount earned (col. 6)	\$38,171.06
(b) Retained percentage 10%	\$ 3,817.10
(c) Total earned less retained percentage ..	\$34,353.96
(d) Total previously approved	\$32,791.57
(e) Amount due this estimate	\$ 1,562.39
(f) Unpaid from previous estimates	\$
(g) Total amount due	\$ 1,562.39

I further certify that all claims outstanding against Fort Pitt Electric Co. for labor, materials, and expend-
(Contractor)

able equipment employed in the performance of said contract have been paid in full in accordance with the requirements of said contract, ~~except such outstanding claims as are listed below or on the attached sheet,² which statement contains all claims against the contractor which are not yet paid, including all disputed claims and any claims to which the contractor has or will assert any defense.~~

Contractor Fort Pitt Electric Company
By Walter F. Weberg
Title: Partner

Date November 2, 1939

**CERTIFICATE OF THE OWNER'S SUPERVISING ENGINEER
OR ARCHITECT IN CHARGE**

I certify that I have verified this Periodical Estimate, and that to the best of my knowledge and belief it is a true and correct statement of work performed and materials supplied by the contractor, and that the contractor's certified statement of his account and the amount due him is correct and just, and that all work and material included in this Periodical Estimate have been performed in full accordance with the terms and conditions of the corresponding construction contract documents and authorized changes thereto.

Name C. H. Sorber, R. A.
By (Signed) Charles H. Sorber
Title: Architect

Date November 13, 1939

**CERTIFICATE OF THE PUBLIC WORKS ADMINISTRATION
ENGINEER INSPECTOR IN CHARGE**

I certify that all work and material included in this Periodical Estimate have been inspected by me or my duly authorized assistants and have been found to comply with the terms and conditions of the corresponding construction contract documents and authorized changes thereto.

Name W. C. Ellsworth

By (Signed) W. C. Ellsworth

Title: Resident Engineer Inspector

Date November 22, 1939

REMARKS

My certification of this estimate is qualified in the amount of \$190.00. Change Orders No. 2 and 3 have not been approved by P.W.A. If the Owner elects to pay this amount he does so on his own responsibility.

(Signed) W. C. ELLSWORTH

W. C. Ellsworth

Resident Engineer Inspector PWA

*WARNING TO CONTRACTOR. If no claims are outstanding against the contractor, the clause "except such outstanding claims as are listed below or on the attached sheet, etc." must be deleted from the last paragraph of the contractor's certificate before the contractor signs it.

U. S. Government Printing Office 16-5773

(Separate paper)

Accepted: EDWARD A. YOUNG, Treasurer.

BUILDING ACCOUNT

SCHOOL DISTRICT - BOROUGH OF WEST VIEW
West View, Pennsylvania

SCHOOL WARRANT

No. 56

Date Nov. 24, 1939

To EDWARD A. YOUNG, Treasurer

Pay to the

Order of FORT PITT ELECTRIC COMPANY \$1,562.39

One Thousand Five Hundred

sixty-two and 39/100*****DOLLARS.

F. S. BROWN,

President

HARRY G. CANNING,

Secretary

Payable at

MELLON NATIONAL BANK

8-26 PITTSBURGH, PA. 8-26

Do not Detach From Warrant

Distribution

H-5-H

1562 39

Invoice P.W.A. I-23

Dated Nov. 2, 1939.

(Reverse Side)

Endorsement Constitutes a Receipt in Full
for Account as Stated Within

ENDORSE HERE

PAY THE UNION TRUST CO.
of Pittsburgh, Pa., or Order
FORT PITT ELECTRIC Co.

PAY TO THE ORDER OF
ANY BANK OR BANKER
or thru Pittsburgh Clearing House
—RECEIVED AS COLLECTING AGENT—
Prior Endorsements Guaranteed
THE UNION TRUST CO.
of Pittsburgh Pennsylvania

NOV 27 1939

8-72

PM 4 1

8-72

Plaintiffs' Exhibit 264.

SCHOOL DISTRICT
OF THE
CITY OF McKEESPORT, DR.

To R. W. Schindler Electric Company
Address Pittsburgh, Pa.

To Invoice Attached Dated May 4, 1939 535.98

Examined W. T. NORTON Secretary

\$535.98

Date

19

RECEIVED of the Secretary of the Board of School
Directors, Warrant No. 28246 for the sum of Five hun-
dred thirty-five and 98/100 Dollars in full payment of
the above account.

Sign Here R. W. SCHINDLER ELECTRIC CO.

R. W. SCHINDLER.

DATE, SIGN AND RETURN THIS VOUCHER WITHOUT DELAY.
DO NOT DETACH PAPERS.

(Reverse Side)

**CONSTRUCTION FUND
DOCKET NO. PA. 1935-F**

SCHOOL DISTRICT OF THE CITY OF MCKEESPORT

Warrant 28246

Voucher 1154

Amount \$535.98

Date May 9, 1939

Favor R. W. Schindler Electric Co.

For Payment of Estimate No. 3—Project
No. 1935-F—East End School Bldg.

Approved
By The
Committee
On

Resolution
of the
Board—5/8/39

CHARGE TO ACCOUNT

No. 8	Capital Outlay.....	535.98
-------	---------------------	--------

DISTRIBUTION

H—Capital Outlay	
5.....	535.98

Total.....	<u>535.98</u>
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Plaintiffs' Exhibit 265.

PWCA Form No. 290
Revised 1-10-38

FEDERAL WORKS AGENCY
PUBLIC WORKS ADMINISTRATION

EXPLANATION OF DIFFERENCES BETWEEN AMOUNT OF GRANT
REQUISITIONED AND AMOUNT PAID
SCHOOL PROJECT AT MCKEESPORT, PENNSYLVANIA

Requisition No. 3—Final
Docket No. Pa. 1935-F
P.W. No. 362.2092

Costs per PWA	Proj. Cost and Grant	App'd Grant Cost and Pay-	Amounts of	Remarks
Classifications	Claimed	ment as	Changes	
Preliminary Expenses	per req'n	audited	135.56	
Land, R/W and Easements	772.48	636.92	25,716.25	
Construction (Ex Eng.)	25,716.25		11,381.45	
Engineering	169,933.98	158,552.53	1,060.14	
Legal—Fees & Expense	13,125.28	12,065.14	344.00	
Other Admna. and Overhead	800.00	456.00		
Interest During Const'n	1.26	1.26		
Miscellaneous	2,409.39	2,409.39		

38,637.40

TOTAL (Grant Base)	212,758.64	174,121.24	Explanation of Differences:
45% of Grant Base	94,950.00	78,354.56	
Less excess over Maximum Grant			
Allowable Grant	94,950.00	78,354.56	
Less			
Payments & Clearances	65,728.13	65,728.13	
PAYMENT	29,223.87	12,628.43	
Less		1,000.00*	
Payment, Balance		11,628.43	

* This amount has been temporarily suspended pending satisfactory settlement of alleged Wage Underpayments affecting painters on this and other dockets in Allegheny County.

(Details attached)

Date:
Serial No.

J. J. MADIGAN,
Executive Officer.

STATEMENT OF DIFFERENCES

EXCLUSIONS FROM GRANT BASE:

Preliminary Expense

(a) That portion of Bond Expense applicable to Bond Proceeds not made available for project. Not eligible for inclusion in the grant base. 86/200 of \$302.50

\$ 130.07

\$ 135.56

(b) Cost of advertising for bids on work outside the scope of the project (Razing old building). Not eligible for inclusion in grant base

5.49

Land, R/W and Easements

(c) Cost of Land acquisition disapproved for inclusion in the grant base as outside the scope of the project

25,716.25

25,716.25

<i>Construction:</i>	(d) Cost of extra piling and concrete foundation work in excess of amount approved on Change Order 5-1-1. Not eligible for inclusion in the grant base.	689.45	404.45	418.62
(e)	Cost of resetting iron fence not submitted to PWA for approval. Not eligible for inclusion in the grant base	285.00		
<i>Engineering</i>	(f) Payments to Architect for services of his employees. Disapproved for inclusion in the Grant Base as being covered by basic fee Draftman's time	\$ 148.23		
	Office Clerk, keeping record of plans	20.00		
	J. E. Geyser, Preparation of application	75.00	243.23	
(g)	Payments to Architect for the following items disapproved for inclusion in the grant base for lack of detail:			
	Mimeographing and Binding plans and specifications			
	Re-blueprinting all drawings		91.18	84.21

Legal Fees and Expenses

(h) That portion of Legal Fees applicable to Bond proceeds not made available for project. 86/200 of \$800.00

344.00

344.00

Total Exclusions

\$ 27,303.88

SUSPENSIONS:

Construction:

Electrical contract #4 suspended pending action by the Owner regarding collusive bidding on this contract

10,692.00

Engineering

641.52

Architects Fees 6% of \$10,692.00 above

TOTAL EXCLUSIONS AND SUSPENSIONS

\$ 38,637.40

Plaintiffs' Exhibit 301.

HAMPTON TOWNSHIP SCHOOL DISTRICT**Directors**

Charles S. McKeen, President,
Charles Backhaus, Vice President
Clyde E. Speer, Treasurer
Elmer G. Grant
Frank H. Hunter

Supervising Principal

Cyril C. Sarver
Allison Park, Pa.

Secretary

E. M. Hicks
Gibsonia, Pa.
Gibsonia, Penna.

REFERENCE:

P.W.A. Project No. Pa. 1069-R.

June 5th, 1936

Carter Electric Company,
Pittsburgh, Penna.

Gentlemen:

You are herewith instructed to commence work on the electrical work in the addition to the Hampton Consolidated school. This is in accordance with the contract which was awarded to your company, on December 1935.

Very truly yours

**THE SCHOOL DISTRICT OF THE TOWNSHIP
OF HAMPTON**

By E. M. Hicks
Secretary.

Plaintiffs' Exhibit 566.

CONTRACT

BETWEEN

CITY OF PITTSBURGH and JOHN W. CRAIG

FOR

BURGWIN PLAYGROUND

(Stamped on front)

Oct. 10 1938

**Approved as to conformity with Agreement between
the Applicant and the United States of America.**

**G. DOUGLAS ANDREWS
Associate Director, Region No. 1**

**CITY OF PITTSBURGH
DEPARTMENT OF PUBLIC WORKS
Bureau of Engineering
P. W. A. Project No. Pa. 1634-F**

Form No. 101

- 1. SEPARATE AND SEALED PROPOSALS** will be received at the office of the City Controller, City-County Building until 10:00 A. M., Eastern Standard Time, October 3, 1938, and will be publicly opened and read aloud one hour later in Council Chamber, City-County Building for the Construction of a Bath House and Swimming Pool at BURGWIN PLAYGROUND: Contract No. 1, General Work; Contract No. 2, Plumbing Work; Contract No. 3, Heating Work; Contract No. 4, Electrical Work.
- 2. All bids must be made upon the prepared form of proposal to be on display and obtained at the Contract Office, Room 429 City-County Building on and after September 19, 1938.**

3. The character and amount of bid security to be furnished by bidders is stated in the "Instructions to Bidders."
4. Copies of contract plans and specifications are on exhibit and may be obtained at Room 440 City-County Building. A deposit in the amount of \$2.00 will be made for each set of contract plans and supplementary specifications for each contract, and \$10.00 for the other contract documents. These deposits will be refunded to each actual bidder for one set of each upon their return without marks and in good condition. Other deposits will be returned with a deduction of \$1.00 for plans and supplemental specifications, and of \$5.00 for other contract documents, to defray the actual cost of reproduction of the sets of documents. If the plans and documents are not returned within ten (10) days after the opening of bids, the entire amount of deposit will be forfeited.
5. The Mayor and the Director of the Department of Public Works reserve the right to waive any informalities in, or to reject any or all bids.
6. No bid may be withdrawn for thirty (30) days after the scheduled closing time for receipt of bids.

Frank M. Roessing, Director
Department Public Works

Date September 19, 1938.

Cornelius D. Scully
Mayor

Form No. 102

**CITY OF PITTSBURGH
DEPARTMENT OF PUBLIC WORKS
INSTRUCTIONS TO BIDDERS**

Bidders Responsibility:

1A. Each bidder shall familiarize himself with all of the attached forms, Instructions, General Conditions, Specifications, Drawings, etc., as he will be held responsible to fully comply therewith. Each bidder must visit the site of the work and acquaint himself with conditions affecting the work.

Time and Place of Opening Bids

2A. The separate and sealed bids or proposals for the construction of a Bath House and Swimming Pool at Burgwin Playground. Contract No. 4—Electrical Work will be received, upon the form of proposal prepared for each improvement, at the office of the City Controller, City-County Building, Pittsburgh, Pennsylvania, until the date and time stated in the official advertisement for bids and will be publicly opened and read aloud upon the same date in the place and at the time designated in the said advertisement.

Proposal Forms

3A. All bids shall be made on the prepared form of proposal provided for that purpose, copies of which may be obtained at the office of the Contract Clerk Department of Public Works, City-County Building, Pittsburgh, Pennsylvania, upon presentation of receipt for payment of charges for contract plans and specifications. Bidders shall submit prices for each and all items listed on the proposal form. The prices submitted shall be written out in full and also stated in figures for each item. All items on the Proposal Form must be filled in or the bids will not be considered.

The proposal shall be signed by the bidder or bidders with his or their business address, and shall contain the full names of all persons interested with him or them. If the bidder is a corporation the proposal shall be signed by a properly authorized officer of the Corporation and sealed.

Bid Bond

4A. Bidders are required to file with their proposal, sureties in the form of a Bond or a Certified Check in the amount of not less than 5 per cent of his "Bidders Proposal" for the proposed contract for unit price contracts or, in the case of base bid contracts, of his "Base Bid" for the proposed contract. Such surety shall be payable to the City of Pittsburgh and shall be forfeited as liquidated damages, if the bidder fails to execute the contract and conform with the form of agreement incorporated in the contract documents and furnish bonds as specified within five days after notification from the Director, so to do it.

The Bid Sureties will be returned to all except the three lowest bidders immediately after the awards, and the remaining Bid Sureties will be returned when the executed contracts are delivered to the successful Bidder.

Bond—How Executed

5A. The Bonds herein before required shall, before submission with the bid, be fully executed by both the bidder and the surety or sureties. Where the bidder is a corporation, the bond shall be signed by two officers of the corporation, who have been duly authorized so to do by appropriate action of the corporation, and the seal of the corporation shall be affixed. Where the bidder is an individual or individuals, the bond shall be signed by the individual or individuals affixing signatures to the bid. No changes or additions to the bond or

to the signatures thereon shall be permitted after the opening of bids. Where the bond has not been completely executed by either the bidder or the surety or sureties, said bid shall be invalid and will be rejected.

The successful bidder will be required to execute the Contracts and Bonds in duplicate.

Contractors to Be Qualified

6A. Bidders will be required to submit duplicate sworn statements of their financial responsibility, technical qualifications, and the performance record before contracts can be awarded to them. In order that there may be no delay in the making of awards, bidders should be prepared to submit such statements immediately after the bids are opened.

Time of Completion

7A. The Contractor shall commence work under his contract when ordered by the Director and shall fully complete all work there under within One hundred twenty consecutive calendar days from and including the date the General Contract is countersigned by the City Controller. Contractor for electrical, heating and ventilating and plumbing work shall be prepared to commence their work as soon as the work of the General Contractor is sufficiently advanced to permit them to do so, and shall carry on and complete their work so that the entire construction can be completed within the time limit set for the General Contractor.

Liquidated Damages:

8A. Should the Contractor fail to complete his work before the expiration of the date set for completion or as provided in the contract documents covering extensions of time, then the City may retain the sum of Ten (\$10.00) dollars for each calendar day thereafter that the work remains uncompleted, which sum is agreed

upon as the proper measure of liquidated damages, which the City will sustain per diem by the failure of the contractor to complete the work at the time stipulated, and this sum is not to be construed as in any sense a penalty.

Extensions of Time: No Waiver:

9A. If any Contractor shall be delayed in the completion of his work by reason of unforeseeable causes beyond his control and without his fault or negligence, including but not restricted to, acts of God or of the public enemy, acts or neglect of the City, acts or neglect of any other Contractor, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, the period hereinabove specified for completion of the work shall be extended by such time as shall be fixed by the City.

No such extensions of time shall be deemed a waiver by the City of his right to terminate the Contract for abandonment or delay by the Contractors as herein provided or relieve the Contractor from full responsibility for performance of his obligations hereunder.

Certificate of Insurance:

10A. Successful bidders shall submit certificates or other documentary evidence to the City for approval, covering workmen's compensation insurance; and public liability and property damage insurance as well as any other insurance required by the contract documents.

Insurance Covering Special Hazards:

11A. The Contractor shall provide insurance covering special hazards where required by the specifications.

Regulations Issued Pursuant to So-Called "Kick-Back Statute" Public Act No. 324, 1934.

12A. The Regulations issued pursuant to so-called "Kick-back Statute" shall be strictly adhered to by all

parties identified with the project. Bidders' special attention is called to the schedule of minimum wage rates included in the General Conditions.

Special Notice:

13A. Bidders are required to inform themselves fully of the conditions relating to construction and labor under which the work will be or is now being performed, and each successful bidder must employ, so far as possible, such methods and means in the carrying out of his work as will not cause any interruption or interference with any other contractor.

Changes While Bidding

14A. During the bidding period, bidders may be furnished addenda or bulletins for additions to or alterations of the plans or specifications, such addenda, or bulletins shall be included in the work covered by the proposal and become a part of the contract documents.

If any prospective bidder on the proposed contract is in doubt as to the true meaning of any part of the Plans, Specifications or Contract Documents, he may submit to the Director a written request for interpretation thereof. The bidder submitting the request will be responsible for its prompt delivery. If in the opinion of the Director, the Plans, Specifications or other Contract Documents are not sufficiently clear, an addendum or bulletin will be mailed or delivered to each prospective bidder who has received a set of such documents. The City will not be responsible for any other explanations or interpretations of the proposed documents.

Tests

15A. Tests of material will in general be made by the City through their Bureau of Tests. Where the supplemental specifications so require, tests of materials or workmanship shall be paid for by the Contractor.

In this case the selection of Bureaus, Laboratories and/or Agencies for the inspection and testing of supplies, materials or equipment, shall be subject to the approval of the City. Satisfactory documentary evidence that materials have passed the required inspection and tests, must be furnished to the City.

Signs:

16A. The Contractor shall furnish and erect signs as required in the Supplemental Specifications.

Allowances:

17A. Where certain allowances may be made in the specification for material or equipment, the amount stated is to be taken into consideration by the Contractor. In case the selection of materials or equipment causes the amount to be exceeded, the Contractor will be paid extra in the net amount of the excess, with no addition or profit or overhead charges.

In case the cost of the materials or equipment is less than the amount stated in the specification then a credit is to be allowed by the Contractor to the City in the net amount of such saving. Bids for such materials or equipment will be requested by the City after due advertisement.

Awards

18A: Awards of contracts will be made to the lowest responsible bidder on the "Bidders Proposal" in the case of unit price contracts and on the "Base Bid" for contracts in that classification unless the bidder's proposal or the base bid exceeds the funds available for the contract. In the event that the base bid of the lowest responsible bidder exceeds the funds available for a contract the award will be made to that responsible bidder whose base bid, when reduced by the least number of alternates taken in the sequence specified, does

not exceed the funds available and is lowest in comparison with other bids in the same alternates.

Facilities to Be Provided and Maintained:

19A. The Contractor shall provide facilities for representatives or agents of the Federal Emergency Administration of Public Works as required in the Supplemental Specifications.

Unit Prices for Additions and Deductions.

20A. On Contracts for which Base Bids are requested for the major items of work such as for Bridges, Buildings, etc., and unit prices for additions to or deductions from the work are accepted and become a part of the contract, it is especially understood that such prices are intended to cover small quantities. In the event the quantities affected by a change are more than 10 per cent in excess of the original quantities as shown by the drawings or specifications the unit prices will not apply and supplemental agreements will be entered into, adjusting those unit prices.

Form No. 103

Estimated Cost \$6,000.00.

PROPOSAL

P. W. A. PROJECT NO. PA. 1634-F

To the Mayor and the Director Department of Public Works, City-County Building, Pittsburgh, Pennsylvania

This proposal is submitted in accordance with your advertisement inviting proposals to be received until 10:00 A. M., Eastern Standard Time, on October 3, 1938, for Construction of Swimming Pool and Bath House at Burgwin Playground—Electrical Construction and Fixtures and designated as P. W. A. Project No. Pa. 1634-F—Contract No. 4.

Having carefully examined the contract documents, comprising the plans, specifications and all documents bound therewith, or referred to therein together with all addenda or bulletins thereto, all as prepared by the City of Pittsburgh, and being familiar with the various conditions affecting the work, the undersigned herein agrees to furnish all material, perform all labor and do all else necessary to complete all Electrical Work for the construction of Swimming Pool and Bath House at Burgwin Playground, and do all contract work in accordance with said contract documents, for the sum of Forty-Eight Hundred & Seventy Dollars (\$4,870.00).

PROPOSAL

Accompanying this proposal is a Certified Check in the amount of Two Hundred & Forty-Five Dollars (\$245.00) as bid security.

The undersigned hereby certifies that this Proposal is genuine and not sham or collusive, or made in the interest or in behalf of any person, firm or corporation not herein named, and that the undersigned has not directly or indirectly, induced or solicited any other bidder to submit a sham bid, or any other person, firm, or corporation to refrain from bidding and that the undersigned has not in any manner sought by collusion to secure for himself an advantage over any other bidder.

October 3, 1938.

John W. Craig, d/b/a

Firm Name John W. Craig Electric Co.

By John W. Craig

Title: Owner.

Official Address 726 Herschel St., Pittsburgh, Pa.
Phone Wal. 1248.

GENERAL CONDITIONS

Contract Security.

1. The Contractor shall furnish a surety bond (form attached) in an amount at least equal to 100 per cent of the contract price as security for the faithful performance of this contract. The Contractor shall also furnish a separate surety bond (form attached) in an amount at least equal to 50 per cent of the contract price as security for the payment of all persons performing labor and furnishing materials in connection with this contract.

Insurance.

2. The Contractor shall not commence work under this Contract until he has obtained all Insurance required under this paragraph and such Insurance has been approved by the City, nor shall the Contractor allow any sub-Contractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

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Proof of Carriage of Insurance.

3. The Contractor shall furnish the City with satisfactory proof of carriage of the insurance required.

Qualification for Employment.

4. No person under the age of sixteen (16) years and no person currently serving sentence in a penal or correction institution shall be employed to perform any work on the project under this contract. No person whose age or physical condition is such as to make his employment dangerous to his health or safety, or to the health and safety of others shall be employed to perform any work on the project under this contract: Provided, That this sentence shall not operate against the employment of physically handicapped persons.

otherwise employable, where such persons may be safely assigned to work which they can ably perform. There shall be no discrimination because of race, creed, color, or political affiliations, in the employment of persons for work on the project under this contract. All employees engaged in work on the project under this contract shall have the right to organize and bargain collectively through representatives of their own choosing, and such employees shall be free from interference, restraint, and coercion of employers in the designation of such employees' representatives, in self-organization, and in other concerted activities of such employees, for the purpose of collective bargaining or other mutual aid or protection and no person seeking employment on the project under this contract and no person employed on the project under this contract shall be required as a condition of initial or continued employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of such person's own choosing.

Labor Preference and Employment Service.

5. With respect to all skilled, semi-skilled, and unskilled workers employed on the project under this contract.

- (a) Preference in employment shall be given to persons from the public relief rolls where such persons are available and qualified to perform the work to which the employment relates, and
- (b) To the fullest extent possible workers appropriate to be secured through employment services shall be chosen from the list of qualified workers submitted by local employment agencies designated by the United States Employment Service: Provided, That union workers skilled, semi-skilled, and unskilled, shall not be required to register at such local employment

agencies, but, if such workers are desired by the employer, they shall be obtained through union locals in a customary manner which will insure compliance with sub-paragraph (a) of this paragraph. In the event, however, that employers who wish to employ union workers are not furnished with qualified workers by the union locals within 48 hours (Sundays and holidays excluded) after request is filed by the employer, all workers shall be chosen from lists of qualified workers submitted by local agencies designated by the United States Employment Service.

Non-Discrimination.

6. Except as specifically provided above, workers who are qualified by training and experience and who, as above outlined, are referred for work on the project under this contract, shall not be discriminated against on any grounds whatsoever.

Hours of Work.

7. (a) Except in emergencies, which are defined as unforeseen occurrences and combinations of circumstances involving the public welfare or the protection of work already done on the project or which endanger life or property and call for immediate action or remedy; or
- (b) Special and unusual circumstances rendering it infeasible or impracticable to require adherence to the applicable limitations of hours herein set forth

Skilled, semi-skilled, and unskilled workers employed to perform work on the project under this contract shall not be permitted to work thereon more than 8 hours per day nor more than 40 hours per week: Provided, that

the limitations of hours herein set forth shall not apply to executive, supervisory, administrative, clerical or other non-manual workers* as such.

*For example, camp assistants, cooks, policemen, storekeepers, timekeepers, watchmen, waterboys, and messengers.

Wage Rates.

8. There shall be paid each employee engaged in work on the project under this contract in the trade or occupation listed below, not less than the wage rate set opposite the same, namely:

<u>Trade or Occupation</u>	<u>Hourly Wage Rate</u>
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[Long list of occupations and rates omitted.]

In case it becomes necessary for the contractor or any subcontractor to employ on the project under this contract any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers* as such) for which no minimum wage rate is herein specified, the contractor shall immediately notify the City through its Director, Department of Public Works, who will promptly thereafter furnish the contractor with the minimum rate. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

*For example, camp assistants, cooks, policemen, storekeepers, timekeepers, watchman, waterboys, and messengers.

Posting Minimum Wage Rates.

9. The Contractor shall post at conspicuous points on the site of the project a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

*Claims and Disputes Pertaining to
Classification of Labor.*

10. Claims and disputes pertaining to the classification of labor employed on the project under this contract shall be decided by the City, Provided, that if the parties to the dispute so agree and if the City also agrees, the parties concerned may submit such claims and disputes to the Federal Emergency Administrator of Public Works for decision by the Board of Labor Review of the Federal Emergency Administration of Public Works.

Payment of Employees.

11. The Contractor and each of his sub-contractors shall pay each of his employees engaged in work on the project under this contract in full (unless deductions made mandatory by law) in cash and not less often than once each week.

Convict-Made Materials.

12. No materials manufactured or produced in a penal or correctional institution shall be incorporated in the project under this contract.

Domestic and Foreign Materials.

13. Only such unmanufactured articles, material, and supplies as have been mined or produced in the United States of America, and only such manufactured articles, materials, and supplies as have been manufactured in the United States of America substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States of America, shall be employed under this contract in the construction of the project.

Accident Prevention.

14. Precaution shall be exercised at all times for the protection of persons (including Employees) and

property. The safety provisions of applicable laws, building and construction codes of the City of Pittsburgh shall be observed. Machinery and equipment and all hazards shall be guarded in accordance with the safety provisions of the manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention with applicable law.

Inspection.

15. The Federal Emergency Administrator of Public Works and his authorized representatives and agents shall be permitted to inspect all work, materials, pay rolls, records of personnel, invoices of materials and other relevant data and records.

Construction Reports.

16. The Contractor shall submit to the City schedules of costs and quantities of materials and of other items, which schedules shall be in such form and shall be supported as to correctness by such of the estimates upon which they are based as the City may require. The Contractor shall also submit to the City the following records on forms to be supplied by the City.

- (a) Detailed Estimate, and
- (b) Periodical Estimates for Partial Payment.

Reports to U. S. Department of Labor.

17. The Contractor shall furnish to the United States Department of Labor, as early as practicable, the names and addresses of all of his subcontractors.

The Contractor and each of his subcontractors shall report monthly to said Department, not later than the 5th day following the close of each calendar month, on forms and in accordance with instructions to be supplied by the City, the number of persons directly employed under his contract who, during the particular

calendar month, were on his payrolls, the aggregate amount of each of said payrolls, the man-hours worked, and the total expenditures for materials, which expenditures shall be itemized.

Reports to the City.

18. The Contractor shall report monthly directly to the City not later than the 5th day following the close of each calendar month, on forms and in accordance with instructions to be supplied by the City, the total number of persons who were directly employed under his contract during the particular calendar month.

Payrolls of Contractors and Subcontractors.

19. The Contractor and each of the subcontractors shall prepare his payrolls on forms prescribed in accordance with instructions to be furnished by the City. Not later than the 7th day following the payment of wages, each such contractor shall transmit to the City a certified legible copy of each such payroll. Each such payroll shall be sworn to in accordance with the "Regulations Issued Pursuant to the So-called Kick-Back Statute", which Regulations are herein elsewhere set forth. The Contractor and each of his subcontractors shall submit reports on forms as and when required by the City, covering the purchases of and requisitions for materials, together with such other information as may be required to determine the progress and status of work under this contract.

Project Data and Records.

20. Promptly following the preparation of periodical payrolls of the Contractor and of each of his subcontractors, the Contractor shall furnish the City with such number as may be required of certified copies of such payrolls on form to be supplied by the City. Such certified copies of such payrolls shall be accompanied

by such substantial proof that all bills for services rendered and materials supplied have been duly paid as herein required and by such other data as the City may require.

Payment.

21. (a) Not later than the 15th day of each calendar month, the City will make partial payment to the Contractor on the basis of a duly certified approved estimate of the work performed during the preceding calendar month by the Contractor, but the City will retain 10 per cent of the amount of each such estimate until final completion and acceptance of all work covered by this contract.

(b) The Contractor shall pay:

(1) For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered.

(2) For all materials, tools, and other expendable equipment to the extent of 90 per cent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the 30th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used and

(3) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors, to the extent of each such subcontractors interest therein.

Compliance with Kick-Back Statute and Regulations.

22. The Contractor and each of his subcontractors shall comply with the following statute and regulations issued pursuant thereto:

1. ***Kick-Back Statute.*** The so-called Kick-Back Statute is Public Act No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 938) and reads as follows:

AN ACT to effectuate the purpose of certain statutes concerning rates of pay for labor, by making it unlawful to prevent anyone from receiving the compensation contracted for thereunder, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall induce any person employed in the construction, prosecution or completion of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than \$5,000 or imprisoned not more than five years or both.

Sec. 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior Jointly shall make reasonable regulations for contractors or subcontractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week.

2. Regulations Issued Pursuant to So-Called Kick-Back Statute.

Pursuant to the provisions of Public Act, No. 324, Seventy-third Congress, approved June 13, 1934 (48 Stat. 948) concerning rates of pay for labor, the Secretary of the Treasury and the Secretary of the Interior have jointly made the following regulations:

SECTION 1. (This section quotes the Kick-Back Statute.)

SECTION 2. Each contractor and subcontractor engaged in the construction, prosecution, or completion of any building or work of the United States or of any building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof, shall furnish each week an affidavit with respect to the wages paid each employee during the preceding week.

Said affidavit shall be in the following form:

State of

County of, ss:

I,
(name the party signing affidavit)

..... do hereby certify that I am the
(Title)

employee of
(name of contractor or subcontractor)

who supervises the payment of the employees of said contractor (subcontractor):

that the attached payroll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor (subcontractor) for the construction of

(Project), for the weekly payroll period from the day of 19...., to the day of 19, that no rebates or deductions from any wages due any such person as set out on the attached payroll have

been directly or indirectly made, and that, to the best of my knowledge and belief, there exists no agreement or understanding with any person employed on the project, or any person whatsoever, pursuant to which it is contemplated that I or anyone else shall, directly or indirectly, by force, intimidation, threat, or otherwise, induce or receive any deductions or rebates in any manner whatsoever from any sum paid or to be paid to any person at any time for labor performed or to be performed under the contract for the above named project.

SWORN to before me this day of 19

SECTION 3. Said affidavit shall be executed and sworn to by the officer or employee of the Contractor or subcontractor who supervises the payment of its employees.

Said affidavit shall be delivered within seven days after the payment of the payroll to which it is attached, to the Government representative in charge at the site of the particular project in respect of which it is furnished, who shall forward the same promptly to the Federal Agency having control of such project. If no Government representative is in charge at the site, such affidavit shall be mailed within such seven-day period to the Federal Agency having control of the project.

SECTION 4. At the time upon which the first affidavit with respect to the wages paid to employees is required to be filed by a Contractor or subcontractor pursuant to the requirements of these regulations, there shall also be filed in the manner required by Section 3 hereof a statement under oath by the Contractor or subcontractor, setting forth the name of its officer or employee who supervises the payment of employees, and that

such officer or employee is in a position to have full knowledge of the facts set forth in the form of affidavit required by Section 2 hereof. A similar affidavit shall be immediately filed in the event of a change in the officer or employee who supervises the payment of employees. In the event that the Contractor or subcontractor is a corporation, such affidavit shall be executed by its president or vice-president. In the event that the Contractor or subcontractor is a partnership, such affidavit shall be executed by a member of the firm.

SECTION 5. These regulations shall be made a part of each contract executed after the effective date hereof by the Government for any of the purposes enumerated in Section 2 hereof.

SECTION 6. These regulations shall become effective on January 15, 1935.

3. *Construction of Regulations.*

The clause in the payroll affidavit which reads * * * that the attached payroll is a true and accurate report of the full weekly wages due and paid to each person employed by the said contractor * * * is construed to mean:

- (a) Wages due are the wages earned during the pay period by each person employed by the Contractor, less any deductions required by law.
- (b) At the time of signing the affidavit, the wages due each employee have either been paid to him in full or are being held subject to claim by him.
- (c) Such unpaid wages will be paid in full on demand of the employee entitled to receive them.

The clause * * * that no rebates or deductions from any wages due any such person as set out on the attached payroll have been directly or indirectly

made* does not apply to any legitimate deductions mentioned above which enter into the computation of full weekly wages due.

The "Regulations Issued Pursuant to So-Called Kick-Back Statute" shall not be construed to prohibit deductions required by law.

* * * * * *

Penalty for Non-Payment of Specified Minimum Wage Rate.

23. If the Contractor or any subcontractor shall pay any laborer or mechanic an amount less than the wage rate specified herein, the Contractor shall be subjected to a penalty in an amount equal to twice the difference between the minimum wage rate specified herein and the wage actually paid to each laborer or mechanic for each day during which he has been employed at a wage less than that herein specified. All such penalties shall be withheld by the City for its use: provided, however, that if the Contractor or subcontractor subsequently pays to all laborers and mechanics the balance of the amounts stipulated herein, the City will pay to the Contractor the penalties withheld.

City's Right to Stop Work or Terminate Contract.

24. If (a) the Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors, or (b) a receiver or liquidator shall be appointed for the contractor or for any of his property and shall not be dismissed within 20 days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said 20 days, or (c) the Contractor shall refuse or fail, after Notice or Warning from the Director, to supply enough properly skilled workmen or proper materials, or (d) the Contractor shall refuse or fail to prosecute the work or any part thereof with such diligence as will insure its completion within the period herein specified (or any duly authorized extension there-

of) or shall fail to complete the work within said period, or (e) the Contractor shall fail to make prompt payment to persons supplying labor or materials for the work, or (f) the Contractor shall fail or refuse to regard laws, ordinances or the instructions of the Director, or otherwise be guilty of a substantial violation of any provisions of this Contract, then, and in any such event, the City, without prejudice to any other rights or remedy it may have, may by 10 days Notice to the Contractor, terminate the employment of the Contractor and his right to proceed, either as to the entire work or (at the option of the City) as to any portion thereof to which delay shall have occurred, and may take possession of the work and complete the work by contract or otherwise, as the City may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the compensation to be paid the Contractor hereunder shall exceed the expense of so completing the work (including compensation for additional managerial, administrative and inspection services and any damages for delay), such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor and his sureties shall be liable to the City for such excess. If the right of the Contractor to proceed with the work is so terminated, the City may take possession of and utilize in completing the work such materials, appliances, supplies, plant and equipment as may be on the site of the work and necessary therefore. If the City does not so terminate the right of the Contractor to proceed, the Contractor shall continue the work.

Contractor's Right to Stop Work or Terminate Contract.

25. If the Work shall be stopped by order of the Court or any other public authority, for a period of six months without act or fault of the Contractor or of any

of his agents, servants, employees, or subcontractors, the Contractor may upon 10 days' Notice to the City, discontinue his performance of the Work, and/or terminate the Contract, in which event the liability of the City to the Contractor shall be determined as provided in the paragraphs immediately preceding, except that the Contractor shall not be obligated to pay to the City any excess of the expense of completing the Work over the unpaid balance of the compensation to be paid the Contractor hereunder. .

City's Right to Withhold Payments.

26. The City may withhold from the Contractor, in addition to retained percentages, such an amount or amounts as may be necessary to pay just claims for labor and services rendered and materials furnished in or about the Work. The City shall have the right, acting as agent for the Contractor, to apply such retained amounts to the payment of such just claims.

Notice.

27. The term "Notice", as used herein, shall mean and include written notice. Written notice shall be deemed to have been duly served when delivered to or at the last known business address of the person, firm or corporation for whom intended, or to his, their, or to its duly authorized agent, representative, or officer: or when enclosed in a postage prepaid wrapper or envelope addressed to such person, firm or corporation at his, their or its last known business address and deposited in a United States mail box.

Changes and Alterations.

28. The City may at any time, by a written order, and without notice to the sureties, require the performance of such Changes and Alterations in the work as it may find necessary or desirable. The amount of com-

pensation to be paid to the Contractor for any Changes and Alterations, as so ordered, shall be determined as follows:

(a) By such applicable unit prices, if any, as are set forth in the Contract; or

(b) If no such unit prices are so set forth, then by a lump sum mutually agreed upon by the City and the Contractor; or

(c) If no such unit prices are so set forth and if the parties cannot agree upon a lump sum then by the actual net cost in money to the Contractor of the Materials and of the wages of applied labor (including premiums for Workmen's Compensation Insurance) required for such Changes and Alterations, plus such rental for plant and equipment (other than small tools) required and approved for such Changes and Alterations, plus fifteen per centum (15%) as compensation for all other items of profit, and costs or expenses including administration, overhead, superintendence, insurance (other than Workmen's Compensation Insurance), materials used in temporary structures, allowances made by the Contractor to subcontractors additional premiums upon the performance bond of the Contractor and the use of small tools.

The provisions hereof shall not affect the power of the Contractor to act in case of emergency, as herein provided.

Assignment of Contract.

29. No assignment by the Contractor of any principal construction contract or any part thereof, or of the funds to be received thereunder by the Contractor will be recognized unless such assignment has had the prior written approval of the City, and the surety has been given due notice of such assignment in writing in accordance with the terms of its bond.

Sub-Contracts.

30. No part of the contract shall be sublet without the prior written approval of the City.

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Residence of Mechanics and Laborers.

32. Laborers and Mechanics employed on this project shall have been residents of the Commonwealth for at least ninety days prior to their employment. Failure to keep and comply with this provision shall be sufficient legal reason to refuse payment of the contract price to the Contractor.

Labor Discrimination.

33. The Contractor agrees:—

- (a) That, in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed or color discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the work to which the employment relates.
- (b) That no Contractor, subcontractor, nor any person on his behalf, shall in any manner, discriminate against or intimidate any employee hired for the performance of work under his contract on account of race, creed or color.
- (c) That there may be deducted, from the amount payable to the Contractor under this Contract, a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this contract; and
- (d) That this contract may be cancelled or terminated by the City, and all money due, or to

become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this portion of the Contract.

* * * * *

35. Definitions.

The following terms as used in the contract are respectively defined as follows:

- (a) **Subcontractor:** A Person, firm, or corporation supplying labor and materials or labor for work at the site of the project.
- (b) **Work on the Project:** Work to be performed, including work normally done, at the location of the Project.
- (c) **City:** This term refers to the City of Pittsburgh. Where contractors and others required to take action with the City shall do so through the Director of the Department of Public Works of said City.
- (d) **Director:** The Director of the Department of Public Works of the City of Pittsburgh or his duly authorized agents.
- (e) The term "work performed" as used in Section 21 of these General Conditions, shall include acceptable materials delivered to and suitably stored at the site of the project.

36. Sewer and Water Box Castings.

Where castings are required in the construction of sewer catch basins, inlets, manholes, etc., and for water gate boxes and chambers, they will be furnished by the City under a separate contract.

37. Use of Low Volatile Coal Required.

The Contractor shall use only low volatile coal having a volatile content not to exceed 20% in all portable boilers not equipped with steam air siphons and to conform to such other regulations of the Bureau of Smoke

Regulations which are promulgated by said Bureau under the authority of Ordinance No. 586, approved January 4, 1927, and shall suspend all work requiring the operation of boilers during any period in which the above regulations are not complied with and that such suspension shall apply also when non-compliance obtains for temporary duration.

Engineering Services.

38. Where no engineering service is required by the Contractor, the Director will establish the lines, grades and elevations for the work and the Contractor shall execute the work to the lines, grades and elevations established therefor.

Where engineering services, are stipulated on Contract Plans, or Supplemental Specifications, to be furnished by the Contractor, the engineering work shall be done in the following manner:

The Director will provide line stakes for the curb lines and for slopes, and will establish bench marks at convenient points along the improvement for use in fixing the grades. The Director will also establish elevations at convenient points to fix the curb grade on repaving work. All other engineering services required for construction work shall be the responsibility of the Contractor who must, at his own expense, provide the necessary engineers and surveyors to do the work, and must furnish transit, level and other necessary surveying equipment and supplies for the performance of the work. The equipment provided by the contractor must be approved by the Director as to its condition and suitability. The City reserves, however, the right to check the Contractor's work in this respect to such extent as the Director may deem necessary and advisable. Failure to do such checking of work shall not relieve the Contractor from his responsibility for the accuracy of the construction in accordance with the contract plans and

specifications, or as ordered by the Director. The Contractor shall be required to protect the line and grade stakes set by the City Engineer, and any such stakes disturbed or removed for any cause or for any purpose shall be reset by the Contractor at his own expense. The Contractor shall furnish such laborers as will be required to assist the City Engineers in the performance of their work.

Engineer or Surveyor.

Where engineering service is required to be furnished by the Contractor, the Contractor shall employ an Engineer, or Surveyor, licensed to practise as such in the State of Pennsylvania. The selection of this Engineer shall be subject to the approval of the Director. The Engineer shall give his personal attention to the work, supervise in the field, the staking of all lines and grades run from base lines and bench marks placed by the City Engineers, and be available at all times and informed to discuss engineering questions arising during the life of the Contract.

Should the Engineer fail to comply with the above, approval will be withdrawn by the Director, and the Contractor shall then submit another Engineer for the Director's approval.

39. Order of Work. Rate of Progress. Provisions to Insure Completion within Time Limit.

The Contractor shall do the work herein prescribed at such times and in such places as the Director may require, and to begin and finish such parts or portions of work covered by this agreement as the said Director may require prior to beginning any other portion of said work. Immediately after the signing of this contract, the Contractor shall have prepared a schedule indicating the dates on which the Contractor will start and complete each principal item of work. Such schedule shall

conform to the dates and sequence of operations to which, in the opinion of the Director, work under this contract would be most satisfactorily prosecuted. After approval of such schedule by the Director, the Contractor shall strictly adhere to the provisions thereof. Completion of this contract within the time limit prescribed is the essence of this contract.

If required by the Director, in order to insure the completion of the work within the required time limit, the Contractor shall employ one or more shifts of labor at night, or on Sundays or holidays if so ordered, without extra compensation to the Contractor over and above payment made at contract unit prices for the respective items of work affected. However, failure of the Director to require the Contractor to employ one or more shifts of labor as aforesaid, or refusal of the Director to permit any work whatsoever to be done on Sundays, shall not in any way affect the provision of this contract requiring all work to be completed within the time limit specified, nor release the Contractor from any of the provisions of the Articles of Agreement relating to work unnecessarily delayed and violation of any of the conditions or covenants of the contract.

40. *Alterations and Extra Work.*

The Director shall have the right to order alterations and extra work, and shall have the right to make any alterations in the alignment, grade, arrangement, plans, details, quantity and quality of the work or materials required by the plans or specifications, or to omit any part thereof, or to order the Contractor to furnish any extra work or materials not called for in the plans and specifications that he may deem necessary or advisable, that in case of such alterations or omissions, or of extra work or materials being required the same shall be ordered by the Director; provided, however, no written order need be given by the Director to par-

tially or entirely eliminate contingent items of work in conformity with the provision of the Agreement.

41. *Price for Diminished Work.*

Deductions in price on account of either omissions or reductions in quantity of materials or work shall be figured at the unit price bid, and the Contractor agrees to make no claim for damages or for anticipated profit on account thereof.

42. *Price for Alterations and Extra Work.*

The price, if any, for alterations and the price for extra work shall be that agreed upon by the Director and the Contractor. In case of disagreement as to the compensation for such alterations or extra work, the Contractor agrees to furnish all materials, tools and labor required to complete such alterations or extra work in strict accordance with the plans, specifications and instructions of the Director for the actual reasonable cost thereof as determined by the Director and as hereafter stipulated and qualified plus 15% of such cost, except that no percentage shall be added for equipment rentals, tools furnished, compensation and public liability insurance nor to the cost of bond furnished account said alterations or extra work.

The Contractor shall submit for approval by the Director a schedule of rates to be paid working forces. Additional classes of working forces required shall be furnished upon order of the Director and at the rates approved in writing by the Director.

Overtime compensation for working forces, except men working on union schedule, shall be the same after the expiration of the 8 hour shift as before the expiration of such shift.

Compensation for general office overhead and general office administration cost shall be included in the Contractor's percentage of 15% paid for labor and materials as above provided.

The Contractor shall submit for approval by the Director a schedule of rental rates per diem or per hour, unless otherwise stipulated by the Director for trucks, teams, rollers, machine shovels, cranes, pile drivers, concrete mixers, compressors, pneumatic hammers and other such equipment required to carry out such alterations or extra work which shall stipulate the capacity, rating and grade thereof, and shall be exclusive of operating crew, fuel and other supplies required for the operation thereof, with the exception that the rental rate for trucks and teams, whether owned or hired by the Contractor, shall include all cost of drivers and fuel, and of Workmen's Compensation and public liability insurance.

The working day for equipment shall be considered as an 8 hour working day. Equipment held on the work available for use, but not used during the working day shall be paid for at $\frac{1}{2}$ the rental rate stipulated in the approved schedule. Equipment used on regularly established second shift shall be paid for, for such shift, at the rate of $\frac{3}{4}$ of said rental rate. The maximum payment for equipment used in any calendar day shall not in any case exceed $1\frac{3}{4}$ of the payment computed on rental rates of said schedule for an 8 hour working day.

When ordered by the Director, as needed from time to time, the Contractor shall place equipment on the work in first-class condition subject to the approval of the Director, and it shall be returned in a like condition to the Contractor, ordinary wear excepted. Running repairs required incidental to the work shall be paid for as an item of cost plus 15%; provided, however, that material required for running repairs shall be paid for at actual cost without the addition of Contractor's percentage.

Payment for equipment as above provided shall cease when the Director notifies the Contractor to remove equipment from the work and such equipment shall

be removed from the work within 48 hours of the date of such notice. Transportation of plant and equipment from the Contractor's yard to the site of the work, setting up, dismantling and return of same to Contractor's yard shall be considered as an item of cost, and paid for as such, plus 15%.

All tools and materials remaining on the work fit for use at the completion of the work shall at the option of the Director be returned to the Contractor at an agreed upon price or prices approved by the Director, otherwise such tools and material shall remain the property of the City.

43. *Claims for Extra Compensation.*

All claims for extra compensation over and above the amount agreed upon in this contract, on account of any alterations or changes, or for any extra work, shall be filed with the Director by the Contractor with the original order for such alterations or changes or extra work attached thereto, within thirty (30) days after the completion of said alterations or changes, or extra work, and all claims for extra compensation on account of such changes or alterations or for extra work which are not presented within thirty (30) days after the completion of the same, shall be taken and deemed as waived and forfeited by the Contractor, and in the absence of the above mentioned written order from the Director, it will be deemed, taken and treated as conclusive by all parties hereto, that no changes or alterations have been ordered or made, and that no extra work has been ordered or done.

44. *No Charge For Delay..*

The Contractor will make no charge or claim whatsoever, for hindrance or delay of the work, from any cause during the progress of the same, except a claim for an extension of the time provided in this contract for

the completion of the work. Such a claim shall be made in writing upon the Director within thirty (30) days after the happening of the event or occasion, causing such delay or hindrance, setting forth the cause or causes of such delay or hindrance and the time lost by reason thereof. The decision of the Director as to the additional time to be allowed for the completion of the work, if any, shall be final and conclusive.

When the Director deems it advisable to give consideration to proposed changes in grade, width and position of roadway and sidewalks, or the character of material entering into this contract after physical work has been actually commenced, payment shall be agreed in writing to compensate the Contractor for any expense incurred by him due to idle time of foreman, workmen and equipment.

45. *Right to Construct Utilities.*

The City through the Director shall have the right to construct sewers, catch basins, culverts, and to build up or adjust manholes, to reset or renew frames, and heads for manholes, and to lay water pipes, gas pipes, conduits, or other structures on the line of the improvement and to grant permits for house connections with sewers, water, gas pipes, conduits, etc., on the line of the improvement at any time during the execution of the work under this contract; and if during the prosecution of this contract other contractors may be working within the lines of work of this contract, or within lines adjacent or contiguous thereto, either on contracts for the City or for public utility corporations, or others, the Contractors shall arrange to conduct operations in such manner as to cause least interference with each other. In case of dispute as to which contractor shall occupy certain territory and have priority to do certain work the Director shall make the decision which shall be final and must be complied with.

The Director may suspend work under this contract, or any portion thereof at any time for purposes above stated, or when traffic conditions may require, or for any other purpose, without compensation, except as above provided in section 44 hereof, to the Contractor for such suspension other than an extension of time for completing the work equal to the time lost for such suspension, and the Contractor shall not interfere with, or place any impediment in the way of any person, or persons, who may be engaged in any of the aforesaid operations, or doing any work on the line of the improvement deemed necessary by the Director.

Contractor Liable for "Ys" and Laterals.

46. The Contractor shall be responsible and liable for the placing of "Y" connections and house laterals in the location and to the grade as shown on the contract plans or as ordered by the Director in the field; and should the Contractor omit or fail to construct any such "Ys" or laterals, and said omission or failure to construct cause the City or others any expense by reason thereof after the contract is completed and accepted, the Contractor shall be held liable for the entire cost of placing or constructing said "Ys" or laterals in accordance with the requirements of the contract.

Corporations to be Notified.

47. Where the property of franchise-holding corporations, or individuals, form an obstruction to the work, the Director will notify said corporations, or individuals, to protect their property, and order reconstruction where necessary.

Supervision and Inspection.

48. The work shall be at all times under the immediate supervision of the Director, or those whom he may designate, who shall at all times have free access to all parts of the work and all places where materials for the

same are prepared, and shall have every facility rendered him for the proper inspection of all materials entering into, and workmanship executed for the work under this contract, but it is expressly understood that the inspection of the work and materials by the Director will in no way lessen the responsibility of the Contractor or release him from his obligation to perform and deliver to the City sound and satisfactory work, and the orders of the Director shall be obeyed by the Contractor and by all persons employed on the work.

Re-Inspection. Condemned Work to be Removed.

49. Materials or work once accepted by the Director may be rejected at any time should any defects in same be discovered before the entire work has been finally accepted and fully paid for and shall be removed within 48 hours thereafter, and further agrees that the Director may require the Contractor to remove and replace any portion of the work covered by the maintenance provisions of the Contract which is found to be defective, either as to quality or quantity at any time before the expiration of the said guarantee period, provided in this Contract, and that when so ordered by the Director, the Contractor shall remove the said work and materials and replace same with satisfactory materials at his own expense in conformity with this Contract.

Employees Dismissal.

50. The Contractor shall discharge and not again employ, without the consent of the Director, any employe of his who has used profane or abusive language to any employe of the City of Pittsburgh, or any employe of his who impedes or embarrasses any employe of the City in the performance of his duty, or any employe of his, who, in the opinion of the Director, is careless or incompetent, or who obstructs the progress of

the work or disobeys or evades the instructions of the Director.

Discontinuance of Work Unnecessarily Delayed, or Executed in Bad Faith. Director empowered to Complete Work.

51. If at any time the Director shall be of the opinion that the said work, or any part thereof, is unnecessarily delayed, or that at the rate of progress being made, the work will not be completed within the contract time, or that the Contractor is wilfully violating any of the conditions or covenants of this agreement, or is executing the same in bad faith, he shall have the power to notify the Contractor to discontinue all work under this contract, or any part thereof, and thereupon the Contractor shall cease said work, and the Director shall have the power to place such and as many persons as he may deem necessary to work at and complete the work herein described, or any part thereof, and to use such materials, tools, supplies and equipment as he may find upon the location of the said work, or to procure other materials, tools and supplies, and to rent equipment deemed necessary for the completion of the same, or to contract with other parties pursuant to Law for the prosecution of all work remaining uncompleted, and to charge the cost and expense of said labor, materials and supplies, and for rental of said equipment, or of such contract for completing the work to the Contractor, and the cost and expense so charged shall be deducted from and paid by the City out of such monies as may then be due, or at any time thereafter become due, to the Contractor under and by virtue of this Contract, and in case such cost and expense is less than the sum which would have been payable under this contract, if the same had been satisfactorily completed by the Contractor, then the said Contractor shall be entitled to receive the difference, but in case such cost and ex-

pense shall exceed the last said sum, then the Contractor, his executors, administrators, or assigns shall pay the amount of such excess to the City within thirty (30) calendar days after date of notice of the Director of the excess due.

Street Improvements Disturbed Outside Neat Payment Lines to be Restored at Contractor's Own Expense.

52. The Contractor shall at his own cost and expense, relay, repair, or reconstruct, as may be ordered by the Director, all roadway pavement surfacing, bases therefor, sidewalk pavements and curbs that may become damaged, removed or disturbed in areas outside the neat payment lines provided in this contract, for any such types of construction so affected from any cause whatsoever, by reason of the operations of the Contractor's failure to provide proper methods, precautions or safeguards, or by negligence of any kind, or failure to adhere strictly to the provisions of this contract, or to instructions given in the field; provided, however, that failure of the Director to issue instructions governing the manner in which work is to be carried out, or his acquiescence in the manner in which the contractor elects to carry out work shall not relieve the Contractor of any of the foregoing responsibilities and requirements.

Further, the Contractor shall, at his own cost and expense, relay, repair, or reconstruct, as may be ordered by the Director, any of the foregoing types of construction that subsequently may become disturbed, or damaged in areas outside the neat payment lines provided in this contract, for any of such types of construction, during a period of one year after the completion of work under this contract and acceptance thereof by the Director, by reason of trenching for retaining walls and sewers, or by excavation for catch basins, manholes, shafts and various types of chambers, or by tunnelling

and benching for construction of underground structures.

The Contractor shall, at his own cost and expense, keep the pavements, sidewalks, and curbs so relaid, repaired or reconstructed, in good repair satisfactory to the Director, in conformity with the requirements of the Contract for a period of one year after date of final acceptance of all work embraced under this contract.

Contractor to Sustain All Losses.

53. All loss or damage arising out of the nature of the work or any damages to the work itself, to be done under this contract, for any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from any cause whatsoever, until the same shall have been finally accepted and fully paid for, shall be sustained and paid by the Contractor.

Contractor Responsible Until Work is Completed.

54. The Contractor shall have charge of and be responsible for the entire work until completed and accepted by final payment; he shall give his personal supervision to the faithful prosecution of the work; he shall keep it under his own control, and in case of his absence, shall have a competent representative or foreman on the work, who shall receive orders and instructions from the Director; and have full authority to execute the same and to supply materials, tools and labor without delay.

Protection, Supporting and Maintenance of Structures.

55. The Contractor shall maintain the service of, shore up, sling, support, protect and make good as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections, conduits, manholes, drains, vaults, buildings, tracks or other structures, and sub-

structures of public utility companies, all service lines and structures including sub-structures of private abutting owners, that are located within the lines of the improvement, whether shown on the contract plans or not, that may be liable to disturbance or injury during the progress of the work, and that all necessary supports and all labor and material necessary to reconnect and restore all such structures that become disturbed or damaged to their original condition shall be provided by him at his own expense, with the exception of such permanent supports as may be ordered by the Director.

* * * * *

All additional cost and expense of labor, materials and tools involved by any change in the alignment and/or grade of any structures and trenches therefor, that are included in this contract shall be borne by the Contractor and no claim for compensation for any such cost and expense shall be made, except when the basis for such compensation is agreed upon in writing by the parties hereto before the work causing such cost and expense is commenced; provided, however, that payment for Trench Excavation or Extra Trench Excavation and for Sheet piling, Shoring and Bracing the open trenches will be made in conformity with the requirements of the Specifications.

Contractor Liable for Damages.

56. The Contractor shall not obstruct the streets, street railways, steam railroads, passenger travel or traffic or river navigation, without the consent of the proper authorities, and shall observe the laws of the same; he shall place and at all times keep proper guards, fences, barricades, watchmen, etc., and at night suitable and sufficient lamps for the prevention of accidents; he shall observe police regulations and city ordinances; he shall indemnify and save harmless the City its officers, employees and agents, from all suits, actions and proceed-

ings of every kind which may be brought against, the City, or its officers, employees or agents, for or on account of any injuries or damages to persons or property received or sustained by any person or persons, firm or corporation by or from the Contractor, or his employees or agents, while engaged in the prosecution of the work under this contract, or by or in consequence of any materials or explosives used on said work, or by or on account of any improper materials or workmanship used in its construction, or by or on account of any accident that may occur during the performance of the work, or by or on account of any patent invention or article or arrangement that may be used by the Contractor in the work to be done or the material furnished for the work under this contract, or by or on account of any other act either of omission or commission of the Contractor, or of his agent, or employees, and as much money due him under and by virtue of this contract as the Director may consider necessary, shall be retained by the City until all suits or claims for damages as hereinbefore mentioned, which may have been filed with the Director before or immediately after the completion of the work embraced under this contract, shall have been determined and settled and satisfactory evidence thereof furnished to the Director.

Use of City Water.

57. In case the Contractor uses water from the city pipes for any and all the work herein specified or shown upon the contract plans, all such water used shall be paid for by the Contractor at the established current meter rates of the city and in accordance with the rules and regulations of the Bureau of Water and Board of Water Assessors governing the use of same.

Maintenance of Highways.

58. If active work is discontinued on the improvement of any street, way, or other public highways, due

to the intervention of winter weather, or the Contractor's inability to proceed with the work from any other cause, the Contractor shall, at his own cost and expense, and in a manner satisfactory to the Director, maintain said highways during such periods in a safe and passable condition for vehicle and foot travel by furnishing and placing cinders, gravel, granulated or crushed slag, broken stone or lumber to the width and depth ordered by the Director. Such material shall be placed in layers, and shall be rolled and compacted to the satisfaction of the Director.

When due to delays caused or ordered by the City and not due to failure of the Contractor to fulfill the terms of his contract, work is carried into winter weather, any maintenance required by the City shall be paid for by the City. However, where winter weather intervenes in a contract, the Director shall have the right to order the Contractor to discontinue all concrete work between November 15th and March 15th, during which period the Contractor shall at his own cost and expense maintain highways as hereinbefore required.

Estimate of the Director to be Final.

59. The measurements taken and the estimates and certificates made by the Director shall be final and conclusive evidence of the amount of material furnished and work performed by the Contractor under and by virtue of this Contract, and shall be taken as the full measure of compensation to be received by the Contractor.

**CITY OF PITTSBURGH
DEPARTMENT OF PUBLIC WORKS
BUREAU OF ENGINEERING**

***Supplementary Specifications for the Construction of a
Swimming Pool, Bath House and Appurte-
nances at Burgwin***

PLAYGROUND

W. P. A. DOCKET NO. PA. 1634 — F

CONTRACT NO. 4

ELECTRICAL WORK

August 1938

Plans and Specifications

1. All work done and material furnished under this contract shall be in accordance with the Contract Plan Accession No. G-1838 and the Contract Documents, the laws and regulations of the Board of Fire Underwriters and the Bureau of Electricity, City of Pittsburgh, except as otherwise stipulated herein or on the Contract Plan.

Scope of Work.

2. The Contractor shall furnish all tools, labor, material equipment and other facilities necessary to complete and install in a first-class workmanlike manner all electrical fixtures, for inside and outside lighting, underground service for lighting and power, flood light poles, panel and distribution boards, connection of motors and all other electrical work, fixtures and apparatus, all in accordance with the Contract Documents and orders of the Director in the field.

Bidders to Make Inspection.

3. The Contract Plan shows in a general way the work to be done and the bidder shall personally inspect the location of the proposed work and determine in his

own way the working conditions, difficulties and obstructions to be encountered at the site of work.

Conduit Cutting and Threading.

7. As the work of the building nears completion all threading, cutting, etc., shall be done in the basement or where directed by the Director.

Ordinances and Electric Code.

8. Nothing contained in this specification or shown on the contract plan shall be so construed as to conflict with any local, municipal or state laws or regulations, governing the installation of electrical or other work specified herein, and all such ordinances and regulations, including the Electric Code of the City of Pittsburgh, are hereby incorporated and made a part of these specifications.

He shall also obtain all certificates of inspection and approval from the Bureau of Electricity, Department of Public Safety and shall mail same to the Director before final payment is made.

Temporary Light.

10. The General Contractor will provide all temporary wiring and lamps required and pay for all current used for a sufficient general illumination to properly execute the work of all trades, including Electrical, Heating and Plumbing, as determined by the Director.

Service Connections.

14. The Director will make arrangements with the Duquesne Light Co. for meter and service connections as required.

The arrangement of all conduits and the method of

fastening same shall be subject to the approval of the Director. Not more than four 90 degrees bends shall occur in any one run of rigid steel conduit. Where conditions necessitate more bends, a junction box shall be installed to facilitate pulling in wires.

The right is reserved to change the exact location of outlet in any room before same is installed. Such change to be at the option of the Director.

Unless otherwise indicated, outlet boxes in walls shall be located with center line at the following elevation above the finished floor line:

Switch outlets	4' — 0"
Bracket Outlets	6' — 4"
Plug receptacles	3' — 0"
Plug receptacles 2nd Floor—in wood base	
Distribution panels	4' — 0"
Door Bell	7' — 0"

If these heights must be changed to meet building conditions, the Contractor shall use new dimensions given by the Director.

Guarantee and Maintenance.

43. The Contractor agrees to accept the provisions of the Contract Documents as relating to maintenance for all work to be done under this contract and, further, he agrees to consider as a part of said maintenance, all expense necessary to keep all work done, and equipment installed under this contract in a first-class operating condition satisfactory to the Director for a period of one year from the date of final acceptance by the City.

Signs and Facilities.

45. This Contractor will not be required to furnish signs designating the Project or facilities for the P.W.A. engineers.

Insurance, Special Hazards.

46. The following special hazards shall be covered by rider or riders to the Public Liability and, or Property Damage Insurance policy or policies required in Section 2b of the General Conditions or by separate policies of insurance. This insurance shall be for the amounts given below and more fully defined in said Section 2b.

Automotive insurance covering trucks and automobiles of contractors and any Sub-contractors in the amount of \$10,000-\$20,000 personal and \$5,000 property.

The Contractor shall furnish the City at the time of awardal of Contract to him, three (3) certificates of each insurance policy required above and in Section 2 of the General Conditions. Each certificate shall contain, in addition to other information, the effective and expiration dates of the policy and the amounts of coverage. Each certificate shall further recite that the policy contains a statement that the policy cannot be cancelled by the insurer in less than ten (10) days after the insured has received written notice of cancellation.

Form No. 105

GENERAL.

Sections 1 to 35, Inclusive.

Materials and Work Included.

1. The Contractor shall furnish all labor, tools, material and equipment necessary and do all work incident to the manufacture and erection of the construction covered by this contract. All materials and workmanship shall be in strict accordance with the contract plans, the following and such special or supplementary specifications as may be made for this contract and such instructions as may be issued by the Director during the progress of the work. When the supple-

mentary specifications are attached as part of the contract and conflict with the following specifications, those so attached shall take precedence.

Director's Approval On all Construction Materials.

2. All materials required for the proper and workmanlike completion of this contract shall be approved by the Director before being incorporated in the work. The Director reserves the right, through the Bureau of Tests, to have any and all materials tested and analyzed by said Bureau of Tests, in order that he be positively assured that all materials conform to and properly meet the specifications adopted by the Department of Public Works, City of Pittsburgh.

Contract Plans and Specifications Furnished by the City.

3. The contractor will be furnished, free of cost to him, such copies of contract plans and specifications as may be required for his use during the execution of the work. These plans will show the forms, dimensions, arrangement and materials, also the locations and elevations of the various parts forming the structure. Steel plans will show the stresses to which the various members of the structure are to be subjected, the make-up of the members, their form and general arrangement.

Where so stated in the supplementary specifications, the City will furnish full size detail drawings for ornamental work which will require clay models and moulds to secure proper finish, for special ornamental cast iron work and for name plates.

Contractor to Check City's Plans.

4. All dimensions shown on Contract Plans are based on surveys, and/or taken from plans of work now in existence, and/or under construction. The Contractor shall check all dimensions in the field, which govern the location or fit of work under this contract,

with work now in existence, and/or under construction. He shall also check the Contract Plans for any errors existing thereon, at the earliest date possible, and any errors found shall be reported to the Director for correction in order to avoid any delay in the completion of the work.

The Contractor assumes responsibility for the existence and correction of all errors in dimensions and work and shall perform all necessary work caused by inaccuracies on the plans or in the field without additional compensation.

Working Drawings Furnished by Contractor.

5. For stone masonry, the contractor shall prepare working drawings for each separate unit of the structure. These drawings shall show each course of stone in plan with its individual stones in place and dimensioned in figures and be marked with a number indicating its position in the course and a letter or letters to indicate the position of the course in the structure; the structure in elevation, or vertical section, showing the courses with their distinguishing letters.

For reinforced concrete masonry the contractor shall prepare detail working drawings showing location, sizes and arrangements of all reinforcing bars and structural steel, describing fully by figures all lengths, spacing and bends, giving the number of pieces and lengths of each piece or member.

For all structures requiring the use of falsework during erection the Contractor shall submit to the Director for his approval three sets of prints of the complete drawings of the falsework, including foundations, bents, bracing, arch centering, trusses, floor system, falsework, forms, etc. These drawings will be examined and the Contractor's attention called to any weakness which may be discovered, however, the City assumes no

responsibility for weaknesses that may develop in any part of the falsework.

For steel grillages the Contractor shall prepare shop working drawings describing fully by dimensions and notes the work to be done at the shop fabricating the work.

For pneumatic caisson work the Contractor shall prepare complete working drawings of the Caissons he proposes using, giving in figures all dimensions and all sizes of parts and materials.

For cofferdam work the Contractor shall prepare complete working drawings showing the dimensions of the cofferdam and its construction, bracing and the methods he proposes to use in placing the masonry work therein.

For structural steel the Contractor shall prepare shop or detail working drawings of all parts or members of the steel work, describing fully by dimensions and notes, the work to be done by the Contractor.

Where sewers or portions thereof are to be constructed by the tunnel method no work shall be commenced thereon until detailed plans for same shall have been prepared by the Contractor and submitted to and approved by the Director, in conformity with the requirements of "Details of Construction," governing "Tunnelling."

All detail or working drawings shall be made in ink on tracing cloth and shall be the same size and have the same arrangement of border lines, title space and space for approval by City as the contract plans furnished by the City. The title on such drawings shall give the name of the contract, name of the Contractor and the work detailed thereon.

Blueprints to be Submitted for Checking.

6. After the tracings have been checked by the Contractor, blue-prints therefrom in duplicate shall be

submitted to the Director for examination, one copy of which will be returned to the Contractor with such corrections as the Director may desire noted thereon. The examination by the Director will consist only in an inspection as to the strength of the structure and the general location of main members; however, this examination shall in no manner be considered as relieving the Contractor of responsibility for the proper size and location of members as shown on the contract plans.

Tracing Submitted for Approval.

7. Upon receipt of corrected blueprints, the Contractor shall correct the tracings in accordance with the corrections noted on the blueprints by the Director, and submit the tracings to the Director for his approval.

Making Changes on Approved Drawing.

8. No changes or alterations shall be made on the tracings after they have been approved by the Director, except by written permission or direction of the Director.

Tracings, etc., to become Property of City.

9. All tracings, original copies of sketch sheets and shop or material bills for the various members of the structure shall become the property of the City and must be delivered to the Director before final payment on the contract will be made.

Mill Orders.

10. The Contractor shall furnish the Director with duplicate copies of all mill orders he places with the mills for materials to be used on the contract, also of all orders for castings and miscellaneous materials which he purchases that are to form a part of the finished structure. All orders shall show the date they were placed.

Shipping Bills or Statements.

11. The Contractor shall furnish the Director duplicate copies of all shipping bills or statements which shall show the number of pieces, their marks and weights for all parts of the structure shipped to the site. Whenever materials for erection purposes which do not enter into the finished structure are shipped with material for the structure, such materials shall be marked on the shipping statement as erection material. Shipping statements must show date of shipment and the car numbers containing the shipment.

Order for Reinforcement.

12. The Contractor shall not order any structural or reinforcement steel until the submitted detail drawings have been approved by the Director and notice has been given the Director with what firm or firms the order or orders are to be placed. Such notice shall state the quantity of material ordered and the location of the mill and shop where the material will be rolled and fabricated. Orders for material shall not be unnecessarily scattered among different manufacturers. The Contractor shall furnish the Director with duplicate copies of all orders for structural and reinforcing steel at the time the orders are placed with mills and shops, and copies of shipping statements when the material is shipped from mills and shops.

Models and Moulds.

13. Where noted on the contract plans that models and moulds are to be used in constructing ornamental parts, the Contractor shall construct clay models from the full size detail drawings furnished by the City. These models shall be subject to the approval of the Director.

The approved clay models shall be used to construct plaster moulds which shall be placed in the forms and

used in casting the ornamental parts. The moulds shall also be subject to the approval of the Director.

Where so noted in the contract plans or in the supplementary specifications, the models will be furnished by the City.

Storage of Materials.

14. Buildings, yards or sidings that may be required for the delivery or storing of materials shall be provided by and at the cost of the Contractor. All materials thus stored shall be placed upon sleepers, housed or covered, so as to properly protect them against the action of falling or surface water, to the satisfaction of the Director.

Old Materials.

15. All old materials existent within the confines of the contract shall remain the property of the City of Pittsburgh except when otherwise stipulated in these specifications, on the contract plans or in special or supplemental specifications or ordered by the Director in the field, in which case the same shall be disposed of at the expense of the Contractor.

Office for Engineers and Inspectors.

16. The Contractor shall, if ordered by the Director, provide a suitable room near the work, with heating provision, plan table, chairs, locker and telephone service for the use of engineers and inspectors.

* * * * *

Sunday Work.

20. The employment of labor for overtime or Sunday work shall be only with the permission of the Director.

Sub-Contracts.

21. Immediately following the countersigning of this contract by the City Controller the Contractor shall submit in writing, to the Director for approval, information as to whom he proposes sub-letting any portion of this contract, whether such sub-contract be for labor or material or both. This communication shall also show what portions of the work or materials he proposes having supplied by each sub-contractor. The Director reserves the right to refuse or accept this proposal and the Contractor hereby agrees to abide by the Director's decision.

Contractor to Locate his Work.

22. The Contractor shall accurately locate his work as to alignment, position and elevations, as shown on contract plans; using monuments, points and bench marks furnished by the Director.

Director to have Access to Work.

23. The Director shall have access to all parts of the work during its construction and preparation for construction, and after completion, to do all checking, inspecting and measuring he may deem necessary. The Contractor shall build all temporary platforms or scaffolds necessary for the performance of the work to the satisfaction of the Director. No materials shall be used in the construction until the Contractor is notified by the Director of its acceptance for use. When work is to be done outside the regular hours, the Contractor shall secure the consent of the Director so that the inspector may be present and at all times shall prosecute his work in a systematic way so as to facilitate supervision by the inspector. The presence of the inspector shall not in any wise lessen the responsibility of the Contractor for construction in accordance with contract requirements.

Injury to Work.

24. The Contractor shall use due precautions against injury to his work or the sub-structure upon which he is erecting his work, and shall place and maintain such signals and protection guards as may be required by the Director.

Protection to Adjoining Property.

25. Where the foundations for any part of the structure are close to the tracks of a railroad, wall of a building, retaining wall or other structure, the Contractor shall provide suitable shoring and bracing to support same during his operations and properly back-fill excavations between such structures and the parts of the structure being built. All shoring, bracing and back-filling shall be subject to the approval of the Director.

Access to Adjoining Property.

26. The Contractor shall provide suitable access to adjoining private property. Where in his operations he interferes with entrances that existed before he began work, new entrances shall be built and maintained in a substantial and safe condition by the Contractor and be subject to the approval of the Director.

Bridges over Streets.

27. Whenever a bridge is to be erected over streets, boulevards or roads, openings in the falsework shall be provided as directed by the Director to accommodate the traffic on such street, boulevard or road. The Contractor shall, if ordered by the Director, protect the traffic using said openings from falling of construction materials, by placing covers over the openings.

Structures over and under Railroad Tracks.

28. Where structures cross the right-of-way or tracks of a railroad company, the Contractor shall ob-

tain permits from the proper officials of the railroad company owning or operating the railroad in question before he proceeds to place any materials or falsework over, under or on the right-of-way of the railroad company. The Contractor shall file with the Director a copy of the permit secured from the railroad company.

All expense involved in connection with the possible placing of watchman, or the erection of any temporary structures deemed necessary, shall be adjusted entirely between the Railroad and the Contractor. The Contractor shall relieve the City of all responsibility for any and all damage or expense claimed by the Railroad for all precautions taken or for any accidents that might occur.

Bridges over Navigable Streams.

29. Whenever a bridge is to be erected over a navigable stream, the Contractor shall obtain from the United States War Department the necessary permits to place obstruction to navigation in the stream before starting the placing of falsework or erecting steel work. Copies of such permits, together with blueprints approved by the War Department, shall be placed on file with the Director.

Sub-structures in Navigable Stream.

30. Before starting work on any sub-structure located between the U. S. harbor lines in a navigable stream the Contractor shall secure a permit from the U. S. War Department covering his work. He shall also place and maintain all signals required by them.

Workmanship.

31. All workmanship shall be first class in every respect. All work shall be done by competent workmen, skilled in the kind of work upon which they are employed and directed by competent foremen.

Inspecting and Testing.

32. All materials and workmanship of whatever kind entering into the work shall be subject to the inspection and approval of the Director at any and all times during the progress of and until final completion and acceptance of the work.

Acceptance of Materials and Workmanship.

33. Inspection and acceptance by the Director of any materials or workmanship of whatever kind shall not relieve the Contractor from his responsibility.

No Extra Work Unless Authorized.

34. No extra work shall be commenced nor will be considered as such, except upon written authorization of the Director.

Engineering Services.

35. As required in the Contract, the Contractor shall employ an Engineer or Surveyor licensed to practise as in the State of Pennsylvania. The selection of this Engineer shall be subject to the approval of the Director. The Engineer shall give his personal attention to the work, supervise in the field, the staking of all lines and grades run from base lines and bench marks placed by the City engineers, and be available at all times and informed to discuss engineering questions arising during the life of the Contract.

Should the Engineer fail to comply with the above, approval will be withdrawn by the Director, and the Contractor shall then submit another Engineer for the Director's approval.

THIS AGREEMENT

MADE the Oct 8 1938 day of, in the year 1938, by and between John W. Craig, d/b/a **JOHN W. CRAIG ELECTRIC COMPANY**, of 726 Herschel St., Pittsburgh, Pa. hereinafter called the "Contractor,"

and

CITY OF PITTSBURGH, a municipal corporation of the State of Pennsylvania, acting in this behalf through Cornelius D. Scully Mayor, and Frank M. Roessing Director of the Department of Public Works of said City, they having been duly authorized thereto by Ordinance of the Council of said City, hereinafter called the "City";

WITNESSETH:**ARTICLE 1. SCOPE OF WORK.**

The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications, entitled—Construction of a Bath House and Swimming Pool at Burgwin Playground. Contract No. 4—Electrical—and shall do everything required by this Agreement and the contract documents.

ARTICLE 2. TIME OF COMPLETION.

The work to be performed under this contract shall be commenced when ordered by the Director, and shall be fully completed within One Hundred Twenty (120) consecutive calendar days from and including the date the General Contract is countersigned by the City Controller.

ARTICLE 3. THE CONTRACT SUM.

The City shall pay the contractor for the performance of the contract, subject to additions and deductions

provided therein, in current funds as follows: Four Thousand, Eight hundred seventy dollars (\$4,870.00).

ARTICLE 4. PAYMENTS.

(a) Payments shall be made in accordance with Section 21 of the General Conditions, and shall be at the price or prices set up in the proposal as accepted.

(b) The term "work performed" in Section 21, Paragraph (a) of the General Conditions, shall be construed to include acceptable materials suitably stored on the site, as well as incorporated in the project.

ARTICLE 5. THE CONTRACT DOCUMENTS SHALL CONSIST OF THE FOLLOWING:

- (1) Advertisement.
- (2) Instructions to bidders.
- (3) Proposal (as accepted).
- (4) General Conditions.
- (5) Supplemental Specifications:
- (6) Specifications, including addenda or bulletins.
- (7) Drawings.
- (8) Bonds executed by the Contractor.

This Agreement together with these documents form the contract, and they are as fully a part of the contract as if hereto attached or herein repeated.

The following is an enumeration of the drawings:

Sheet No.	Acc. No.	Description
1	G-1838	Plan, Riser Diagram and Details

The following is an enumeration of addenda or bulletins:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, the day and year first above written.

JOHN W. CRAIG [SEAL]

John W. Craig, d/b/a

JOHN W. CRAIG ELECTRIC CO. [SEAL]

Contractor.

Witness

RALPH J. DAVIS

CITY OF PITTSBURGH

By CORNELIUS D. SCULLY,

Mayor

Attest: Oct. 8 1938

BLAIR A. WILSON,

Mayor's Asst. Secretary

[SEAL]

By F. M. ROESSING,

Director, Dept. of Public Works

J. PAUL JENNINGS,

Chief Clerk, Dept. of Public Works

This contract approved as to form:

ANNE X. ALPERN,

First Asst. City Solicitor

Examined by: October 7, 1938

HIRAM SCHOCH,

Assistant City Solicitor

Countersigned, October 8; 1938.

JAMES P. KERR,

City Controller

John W. Craig, d/b/a JOHN W. CRAIG ELECTRIC COMPANY has filed his fictitious name certificate with the Contract Clerk, D. P. W.

RALPH J. DAVIS.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that I John W. Craig, d/b/a JOHN W. CRAIG ELECTRIC COMPANY, of 726 Herschel St., Pgh., Pa. as principal, and as surety, are held and firmly bound unto the City of Pittsburgh, their certain attorney, successors, or assigns (hereinafter called the Obligee), in the full and just sum of Forty-Eighth Hundred & Seventy — 00/100 — Dollars (\$4,870.00) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents:

WHEREAS said principal has entered into a certain contract with said Obligee, dated Oct. 8, 1938, (hereinafter called the Contract) for Construction of Swimming Pool and Bath House at Burgwin Playgrounds, P.W.A. Project No. PA. 1634-F Contract No. 4—Electrical which contract and the specifications for said work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the principal shall faithfully perform the contract on his part at the time and in the manner therein provided and satisfy all claims and demands incurred in or for the same, or growing out of the same, or for injury or damage to persons or property in the performance thereof, and shall fully indemnify and save harmless the said Obligee from any and all cost and damage which the said Obligee may suffer by reason of failure so to do, and shall fully reimburse and repay the said Obligee any and all outlay and expense which it may incur by reason of any such default, then this obligation shall be null and void; otherwise it shall remain in full force and virtue.

The said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

Approved:

CORNELIUS D. SCULLY,
Mayor.

Attest:

BLAIR A. WILSON,
Assistant Secretary.

SIGNED, SEALED AND DELIVERED IN DUPLICATE THIS 8th day of October, 1938.

(Individual Principals Sign Here)

John W. Craig, d/b/a
JOHN W. CRAIG ELECTRIC COMPANY
JOHN W. CRAIG [SEAL]

In the presence of:

RALPH J. DAVIS.

(Corporate Principal Sign Here)

(Surety sign here)

THE FIDELITY AND CASUALTY COMPANY
OF NEW YORK

By THOMAS E. SPITTAL, [SEAL]
Attorney.

Witness:

RALPH J. DAVIS.

LABOR AND MATERIALMEN'S BOND

(See instructions on third page following)

KNOW ALL MEN BY THESE PRESENTS, THAT I, John W. Craig, d/b/a JOHN W. CRAIG ELECTRIC COMPANY, of 726 Herschel St., Pittsburgh, Pa., as principal, and as surety, are held and firmly bound unto the City of Pittsburgh, their certain attorney, successors, or assigns (hereinafter called the Obligee) in the penal sum of Forty-Eight Hundred & Seventy 00/100 Dollars (\$4,870.00) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS said principal has entered into a certain contract with said Obligee, dated Oct 8 1938, (hereinafter called the Contract for Construction of Swimming Pool and Bath House at Burgwin Playgrounds, P.W.A. Project No. PA. 1634-F. Contract No. 4—Electrical which contract and the specifications for said work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if said principal and all sub-contractors to whom any portion of the work provided for in said contract is sublet and all assignees of said principal and of such subcontractors shall promptly make payment for all labor performed, services rendered and materials furnished in the prosecution of the work provided for in said contract, or in any amendment or extension of or addition to said contract, then the above obligation shall be void; otherwise to remain in full force and effect. PROVIDED, however, that this bond is subject to the following conditions and limitations.

(a) All persons who have performed labor, rendered services or furnished materials or machinery as

aforesaid shall have a direct right of action against the principal and surety on this bond, which right of action shall be asserted in proceedings instituted in the State in which such labor was performed, services rendered or materials furnished (or where labor has been performed, services rendered or materials furnished under said contract in more than one State, then in any such State). Insofar as permitted by the laws of such State, such right of action shall be asserted in a proceeding instituted in the name of the Obligee to the use and benefit of the person instituting such action and of all other persons having claims hereunder, and any other person having a claim hereunder, shall have the right to be made a party to such proceeding (but not later than one year after the complete performance of said contract and final settlement thereof) and to have such claim adjudicated in such action and judgment rendered thereon.

(b) The surety shall not be liable hereunder for any damages or compensation recoverable under any workmen's compensation or employer's liability statute.

(c) In no event shall the surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one year after the complete performance of said contract and final settlement thereof.

(d) As used herein: The term "person" refers to any person, firm or corporation who has furnished materials or machinery to be used on or incorporated in the work or the prosecution thereof provided for in said contract or in any amendment or extension of or addition to said contract, and/or to any person engaged in the prosecution of the work provided for in said contract or in any amendment or extension of or addition to said contract, who is an agent, servant or employee of the principal, or of any subcontractor, or of any assignee of said principal or of any sub-con-

tractor, and also anyone so engaged who performs the work of a laborer or of a mechanic regardless of any contractual relationship between the principal, or any sub-contractor, or any assignee of said principal or of said subcontractor, and such laborer or mechanic, but shall not include office employees not regularly stationed at the site of the work.

The said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of this contract or to the work to be performed thereunder or the specifications accompanying the same, shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

SIGNED, SEALED AND DELIVERED in duplicate this 8 day of October, 1938.

(Individual Principals Sign Here)

John W. Craig, d/b/a

JOHN W. CRAIG ELECTRIC COMPANY (Seal)

JOHN W. CRAIG (Seal)

In the presence of:

RALPH J. DAVIS

(Corporate Principal Sign Here)

By THE FIDELITY AND CASUALTY COMPANY
OF NEW YORK

By THOMAS E. SPITTAL (Seal)

Attorney.

(Surety Sign Here)

Attest:

THE FIDELITY AND CASUALTY COMPANY
OF NEW YORK

By THOMAS E. SPITTAL (Seal)

Attorney.

Witness:

RALPH J. DAVIS

• • • • •

LIMITS OF LIABILITY. The limit of bodily injury liability specified above as applicable to "each person" is the limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury to or death of one person in any one accident; the limit of such liability so specified as applicable to "each accident" is, subject to the said limit for each person, the total limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury to or death of two or more persons in any one accident. The limit of Property Damage Liability expressed above, is the limit of the Company's liability for all Property Damage the result of one accident.

726 Herschel St., W. E. Pittsburgh, Allegheny County, Pa., and elsewhere in the State of Penna.

Electrical Wiring—within buildings—including installation or repair of fixtures or appliances—(installation of electrical machinery or auxiliary apparatus to be separately rated.)

Descrip-
tion of
opera-
tions
(Sum-
marized)

Notes:

Cancellation or change of the above policy shall not take-effect until after 10 days notice in writing shall have first been given by the Company to the City of Pittsburgh, Pa., and also a like notice sent the assured, such notice to commence on the date notice is actually received.

This endorsement has been made a part of the original policy.

This certificate is issued at the request of City of Pittsburgh
Address Pittsburgh, Pennsylvania.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK will mail to the said address a record of any material change in or cancellation of the said policy or policies.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK
By C. J. HAMMER, Resident Manager
 Countersigning Agent or Manager

Date October 6, 1938

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
STATE WORKMEN'S INSURANCE FUND
HARRISBURG**

CERTIFICATE OF INSURANCE

Oct. 5, 1938

This is to certify that the assured named in the following schedule is at this date insured with the **STATE WORKMEN'S INSURANCE FUND** under policy described in the following schedule covering the assured obligation for compensation as imposed upon said assured by provisions of the Workmen's Compensation Act of Pennsylvania, 1915, as amended and all laws amendatory thereof which may be or become effective while this policy is in force, without any exception, qualification or limitation.

DESCRIPTIVE SCHEDULE

Assured John W. Craig Electric Co.

Address 726 Herschel St., Pittsburgh, Penna.

Description of work covered: Electric Constr.

Including all operations incidental to the work of the assured.

"In the event of cancellation of said policy by either party it is understood and agreed that the Fund will give to the holder hereof 10 days notice of such cancellation."

Policy No. 113179-B Effective 7-13-38 12:01 A. M. Expires 7-13-39

This certificate is issued at the request of

Department of Public Works
Room 430 City County Bldg.,
Pittsburgh, Pa.

Whose address is

STATE WORKMEN'S INSURANCE FUND

R. E. BURKE,

Authorized Agent or
Official

Chief Underwriter.

JOHN W. CRAIG CO.
Electrical Contractors
Telephone, Walnut 1248
726 Herschel Street, Pittsburgh, Pa.

October 7, 1938

City of Pittsburgh
Dept of Public Works
Pittsburgh, Pa.

RE: BURGWIN PLAYGROUND
Electrical Contract
P. W. A. Project 1634F

Gentlemen:

You will find that we have not obtained a rider for automobile insurance.

The reason for this is that we do not own any trucks. All our material for this job will be delivered to the site by our material supply dealers.

Yours very truly;
JOHN W. CRAIG ELECTRIC CO.
JOHN W. CRAIG
Proprietor

JC/MJM

No. 388.

BILL No. 1355.

AN ORDINANCE providing for a contract or contracts to be carried out as Federal Emergency Administration of Public Works projects for certain improvements to the public highway, bridges and viaduct, sewerage, drainage, park, recreation and water systems of the City of Pittsburgh, in the Department of Public Works, and providing for the payment of the costs thereof from funds otherwise appropriated therefor.

SECTION 1. Be it ordained and enacted by the City of Pittsburgh, in Council assembled, and it is hereby

ordained and enacted by the authority of the same, That the Mayor and the Director of the Department of Public Works be and they are hereby authorized and directed to advertise for proposals, award and enter into a contract or contracts, including contracts for test holes, for making the following public improvements to the public highway, bridge and viaduct, sewerage, drainage, park, recreation and water systems of the City of Pittsburgh, in the Department of Public Works, in accordance with the laws and ordinances governing said City on improvements performed with financial aid from the Federal Emergency Administration of Public Works:—

<u>Pa. Docket No.</u>		<u>Estimated Cost</u>
	CONSTRUCTION OF RELIEF SEWERS	
1590	Homewood Avenue— from Jonathan Street to Kelly Street	\$ 35,000.00
	Negley Run Drainage Basin— on Prince Street and Burpee Street from Hamilton Avenue to Washington Boulevard With branch on Sheridan Avenue from Hoeveler Street to Collins Avenue And Burpee Street from Rodman Street to Prince Street	275,000.00
	Four Mile Run and Negley Run Drainage Basins— Excavation of test holes	7,000.00

<u>Pa. Docket No.</u>		<u>Estimated Cost</u>
1996	Shady Avenue Bridge Highland Avenue Bridge— Reconstruction of floor systems	60,000.00
	<hr/>	
	GRADING, REGRADING, PAVING, RE- PAVING, CURBING, RECURBING AND OTHERWISE IMPROVING STREETS, AVE- NUES AND BOULEVARDS	
1616	Buena Vista Street	67,000.00
	from Perrysville Ave- nue to Armandale Street	
	Capital Avenue	46,000.00
	from Pioneer Avenue to West Liberty Ave- nue	
	Wedgemere Avenue	10,000.00
	from Brookline Boule- vard to Rossmore Ave- nue	
	Overbrook Boulevard	58,000.00
	from Saw Mill Run Boulevard to about 232 feet west of Spokane Street	
	Beaver Avenue	47,000.00
	from Western Avenue to Pennsylvania Ave- nue	
	Maple Terrace	22,000.00
	from Grandview Ave- nue to Virginia Ave- nue	
	<hr/>	
	Total	250,000.00

<u>Pa. Docket No.</u>		<u>Estimated Cost</u>
1635	Forty-fifth Street from Butler Street to Davison Street	35,000.00
<hr/>		
IMPROVEMENTS TO CITY OWNED PARK AND RECREATION PROPERTIES		
1600	Schenley Park— Comfort Station	18,000.00
1612	Sophia Evert Playground #2— Bleachers and field house	45,000.00
1633	Magee Playground— Bath and Field House	80,000.00
1634	Burgwin Playground— Swimming pool and bath house	85,000.00
1649	Highland Park Zoo Remodeling	25,000.00
1987	West Penn Playground— Recreation building	150,000.00
WALLS AND STEPS		
1599	Waldeck Street Saw Mill Run Boulevard— Construction of walls	65,000.00
	Mann Street— Construction of steps	5,000.00
<hr/>		
IMPROVEMENTS TO THE WATER SYSTEM		
1591	Lincoln District Allentown District Squirrel Hill District— Storage tanks including pipe line and appurtenances therefor Smallman Street Water Main Re- placement between 26th Street and 36th Street	267,000.00

<u>Pa. Docket No.</u>		<u>Estimated Cost</u>
	Oakland Heights Reinforcement Main	267,000.00
1601	Lampher Rising Main Encasement	86,000.00
1968	Second Avenue New Water Main from Greenfield Avenue to a point east of South 10th Street Brilliant Pumping Station Rising Main	448,000.00
		<hr/> \$3,122,000.00

SECTION 2. For the payment of the costs of said work, the Mayor is hereby authorized and directed to issue, and the Controller to countersign, warrants in amounts not exceeding the estimated costs above respectively set forth, drawn on funds otherwise appropriated therefor.

SECTION 3. That any Ordinance or part of Ordinance, conflicting with the provisions of this Ordinance, be and the same is hereby repealed, so far as the same affects this Ordinance.

Ordained and enacted into a law in Council, this 16th day of August, A. D., 1938.

JAMES L. O'TOOLE, JR.,
President of Council

Attest: E. W. LINDSAY,
Clerk of Council
Mayor's Office August 22, 1938.

Approved: CORNELIUS D. SCULLY,
Mayor.

Attest: HOMER C. WADSWORTH,
Mayor's Asst. Secretary

Defendants' Exhibit "A".

Recorded in Ordinance Book, Vol. 49, Page 165, 22nd day of August, 1938.

Pittsburgh, August 29, 1938.

I do hereby certify that the foregoing is a true and correct copy of Ordinance No. 388, Series 1938, as the same appears of record in the office of the City Clerk.

JAMES W. PATTERSON,

[SEAL]

Asst. City Clerk.

Defendants' Exhibit "A".

**THE STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ARCHITECT**

Issued by the American Institute of Architects for use when a percentage of the cost of the work forms the basis of payment.

Third Edition—Copyright 1917-1926 by the American Institute of Architects Washington, D. C.

THIS AGREEMENT made the 24th day of May in the year Nineteen Hundred and Thirty-Seven by and between THE BOROUGH OF CRAFTON hereinafter called the Owner, and V. J. SCHOENEMAN AND H. L. CARTER hereinafter called the Architects,

WITNESSETH, that whereas the Owner intends to erect A MUNICIPAL BUILDING

NOW, THEREFORE, the Owner and the Architect, for the considerations hereinafter named, agree as follows:

The Architect agrees to perform, for the above-named work, professional services as hereinafter set forth.

The Owner agrees to pay the Architect for such services a fee of Six (6) per cent of the cost of the work, with other payments and reimbursements as hereinafter provided, the said percentage being hereinafter referred to as the "basic rate."

The parties hereto further agree to the following conditions:

1. *The Architect's Services.*—The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large scale and full size detail drawings; the drafting of forms of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the work.

* * * * * * *

7. *Supervision of the Work.*—The Architect will endeavor to guard the Owner against defects and deficiencies in the work of contractors, but he does not guarantee the performance of their contracts. The supervision of an Architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk-of-the-works.

When authorized by the owner, a clerk-of-the-works acceptable to both Owner and Architect shall be engaged by the Architect at a salary satisfactory to the Owner and paid by the Owner, upon presentation of the Architect's monthly statements.

8. *Preliminary Estimates.*—When requested to do so the Architect will furnish preliminary estimates on the cost of the work, but he does not guarantee the accuracy of such estimates.

* * * * * * *

The Owner and the Architect hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

W. S. GUY

President, Crafton Borough Council.

VINCENT J. SCHOENEMAN

H. L. CARTER

Attest:

WM. A. ENGLAND

Architects.

Secretary Crafton Borough.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

United States

v.

Hess & Barton, a Pa. Corp., William F. Hess, Edward B. Sargent, Robt. N. Morris, Lord Electric Co., a Delaware Corp., John R. Williams, Walter F. Weberg, J. R. Walters, Franklin Electric & Construction Co., a Pa. Corp., Thomas G. Hodgdon, Thomas G. Hodgdon, Jr., Benj. Raphael, Israel Raphael, Iron City Engineering Co., a Pa. Corp., C. W. Ridinger, Jr., C. W. Ridinger, Sr., Warren I. Bickford, Carter Electric Co., a Pa. Corp., Edwin C. Carter, Craig Electric Co., a Pa. Corp., James V. Burke, G. L. Craig Electric Co., a Pa. Corp., G. L. Craig, Wm. S. Taczanowsky, Chas. M. Cronenweth, John E. Hale, Wm. C. Hemmerle, Morganstern Electric Co., Inc., a Pa. Corp., Ralph M. Morganstern, Daniels Electric Construction Co., a Pa. Corp., Max Daniels, James C. Devlin, Norman B. Leeke, Herbert D. Hale, MacNeil Electric Co., a Pa. Corp., Alvin S. MacNeil, Robt. B. Yates, Winfield S. Martin, M. J. Murray, James A. Rodden, Donald R. Ross, Richard W. Schindler, Star Electric & Construction Co., a Pa. Corp., Walter C. Gloekler, James H. Stauffer, K. K. Wood, Industrial Electric Co., a Pa. Corp., H. L. Fullerton, Louis H. Berkman, John W. Craig, R. G. Diodati, Irwin J. Levinson, Bernard A. Ross, Electrical Contractors Assn. of Pgh., a Pa. Corp., Robert C. Carmack, Michael P. Gordon, William G. Shord, and John Bradley.

No. 10462
Criminal
Docket

Excerpts From Docket Entries.

1939

Nov. 3

" "

True Bill

Indictment filed

Jan. 5, 1940

Defendants Benj. Raphael; Israel Raphael; Iron City Engineering Co. by its president; Charles W. Ridinger, Jr.; Chas. W. Ridinger, Sr.; Warren I. Bickford; Craig Electric Co. by its president; James V. Burke; Chas. M. Cronenweth; Morganstern Electric Co. by its president; Ralph W. Morganstern; Herbert D. Hale; Winfield S. Martin; Michael J. Murray; James A. Rodden; Donald R. Ross; Richard W. Schindler; Star Electric & Construction Co. by its president; Walter G. Gloekler; James H. Stauffer; K. K. Wood; Louis H. Berkman; John W. Craig and Irwin J. Levinson plead nolo contendere.

Jan. 5, 1940

The following defendants change their pleas to nolo contendere; Hess & Barton by its president; Wm. D. Hess; Edw. B. Sargent; Robt. N. Morris; Lord Electric Co. by its vice-president and John R. Williams; Walter F. Weberg; Franklin Electric & Construction Co. by its president; Wm. G. Hodgdon; Wm. G. Hodgdon, Jr.; Carter Electric Co. by its president; Edwin C. Carter; G. L. Craig; G. L. Craig Electric Co. by its sec-treas.; Wm. H. Taczanowsky; John E. Hale; Wm. C. Hemmerle; Max Daniels; Daniels Electric Construction Co., by its president; James C. Devlin; Norman B. Leeke; MacNeil Electric Co., by its president; Alvin S. MacNeil; Robt. B. Yates; Industrial Electric

Co., by its president; H. L. Fullerton; Louis H. Berkman; R. G. Diodati; Bernard A. Ross; Electrical Contractors Assn. of Pgh., by its president; Robt. C. Carmack; Michael P. Gordon; and Wm. G. Shord.

Feb. 6

The sentence of the court is that Iron City Engineering Co. pay a fine of \$1000.—no costs (S)

" "

The sentence of the court is that Walter C. Gloekler pay a fine of \$250—no costs (S)

" "

The sentence of the court is that James V. Burke pay a fine of \$500—no costs (S)

" "

The sentence of the court is that Donald R. Ross pay a fine of \$500—no costs (S)

" "

The sentence of the court is that James A. Rodden pay a fine of \$500—no costs (S)

" "

The sentence of the court is that K. K. Wood pay a fine of \$500—no costs (S)

" "

The sentence of the court is that Irwin J. Levinson pay a fine of \$250—no costs (S)

" "

The sentence of the court is that John R. Williams pay a fine of \$1000—no costs (S)

" "

The sentence of the court is that G. L. Craig Electric Co. pay a fine of \$500—no costs (S)

" "

The sentence of the court is that Wm. F. Hess pay a fine of \$5000—no costs (S)

" "

The sentence of the court is that Chas. M. Cronenweth pay a fine of \$1000—no costs (S)

" "

The sentence of the court is that Edw. B. Sargent pay a fine of \$3000—no costs (S)

" "

The sentence of the court is that Norman B. Leeke pay a fine of \$500—no costs (S)

" "

The sentence of the court is that Wm.

C. Hemmerle pay a fine of \$1000—no costs (S)

Feb. 6, 1940

" " The sentence of the court is that John W. Craig pay a fine of \$250—no costs (S)

" " The sentence of the court is that Israel Raphael pay a fine of \$200—no costs (S)

" " The sentence of the court is that Benjamin Raphael pay a fine of \$1000.—no costs (S)

" " The sentence of the court is that Star Electric & Construction Co. pay a fine of \$250—no costs (S)

" " The sentence of the court is that H. L. Fullerton pay a fine of \$250—no costs (S)

" " The sentence of the court is that Industrial Electric Co. pay a fine of \$250—no costs (S)

" " The sentence of the court is that John E. Hale pay a fine of \$1000—no costs (S)

" " The sentence of the court is that Morgans-
stern Electric Co. pay a fine of \$500—no costs (S)

" " The sentence of the court is that Thomas G. Hodgdon, Jr. pay a fine of \$500—no costs (S)

" " The sentence of the court is that Thomas G. Hodgdon pay a fine of \$500—no costs (S)

" " The sentence of the court is that Franklin Electric & Construction Co. pay a fine of \$1000—no costs (S)

" " The sentence of the court is that Ralph M. Morgans-
stern pay a fine of \$500—no costs (S)

" " The sentence of the court is that Daniels

Electric Construction Co. pay a fine of \$250—no costs (S)

- Feb. 6, 1940 The sentence of the court is that Max Daniels pay a fine of \$250—no costs (S)
- " " The sentence of the court is that Herbert D. Hale pay a fine of \$500—no costs (S)
- " " The sentence of the court is that Hess & Barton pay a fine of \$2000—no costs (S)
- " " The sentence of the court is that Robt. N. Morris pay a fine of \$3000—no costs (S)
- " " The sentence of the court is that Wm. S. Taczanowsky pay a fine of \$100—no costs (S)
- " " The sentence of the court is that Lord Electric Co. pay a fine of \$2000—no costs (S)
- " " The sentence of the court is that Louis H. Berkman pay a fine of \$250—no costs (S)
- " " The sentence of the court is that James H. Stauffer pay a fine of \$500—no costs (S)
- " " The sentence of the court is that Richard W. Schindler pay a fine of \$500—no costs (S)
- " " The sentence of the court is that M. J. Murray pay a fine of \$250—no costs (S)
- " " The sentence of the court is that Warren I. Bickford pay a fine of \$100—no costs (S)
- " " The sentence of the court is that C. W. Ridinger, Sr., pay a fine of \$100—no costs (S)
- " " The sentence of the court is that C. W. Ridinger, Jr., pay a fine of \$500—no costs (S)
- " " The sentence of the court is that R. G. Diodati pay a fine of \$250—no costs (S)
- " " The sentence of the court is that Craig

- Electric Co. pay a fine of \$500 — no costs (S)
- Feb. 6, 1940 The sentence of the court is that Edwin C. Carter pay a fine of \$500—no costs (S)
- " " The sentence of the court is that G. L. Craig pay a fine of \$400—no costs (S)
- " " The sentence of the court is that Robert B. Yates pay a fine of \$50—no costs (S)
- " " The sentence of the court is that MacNeil Electric Co. pay a fine of \$250 — no costs (S)
- " " The sentence of the court is that Alvin S. MacNeil pay a fine of \$200—no costs (S)
- " " The sentence of the court is that Carter Electric Co. pay a fine of \$500 — no costs (S)
- " " The sentence of the court is that James Devlin pay a fine of \$500—no costs (S)
- " " The sentence of the court is that Bernard A. Ross pay a fine of \$250—no costs (S)
- " " Final commitments issued
- " " Final commitments returned, not executed, defendants having paid fines as follows: Morganstern Electric Co., John E. Hale; Industrial Electric Co., H. L. Fullerton; Norman B. Leeke, Edw. B. Sargent; Chas. M. Cronenweth; Wm. F. Hess; G. L. Craig Electric Co.; C. W. Ridinger, Jr., John R. Williams; MacNeil Electric Co.; Alvin S. MacNeil; Robt. B. Yates; G. L. Craig; Edwin C. Carter; Craig Electric Co.; Thos. G. Hodgdon, Jr.; James V. Burke; R. G. Diodati; Max Daniels; Daniels Electric Construction Co.; Ralph M. Morganstern; Franklin Electric & Construction Co., Thomas G. Hodgdon.

- Feb. 7, 1940** Final commitments returned not executed as to the following defendants, they having paid their fines:
Hess & Barton; Wm. C. Hemmerle, Irwin J. Levinson, K. K. Wood, James A. Rodden, Michael P. Gordon, Walter C. Gloekler, James C. Devlin, Bernard A. Ross, Carter Electric Co., D. R. Ross, M. J. Murray, Herbert D. Hale, Warren I. Bickford, Wm. S. Taczanowsky, Lord Electric Co., Louis H. Berkman, James H. Stauffer, Iron City Engineering Co., Israel Raphael, Wm. G. Shord, Robert N. Morris, C. W. Ridinger, Sr., Star Electric & Construction Co., Richard W. Schindler, John W. Craig, Benjamin Raphael.
- " 8 The sentence of the court is that J. R. Walters pay a fine of \$500—no costs (S)
- " " The sentence of the court is that Walter F. Weberg pay a fine of \$1000—no costs (S)
- " " Final commitments issued
- " " Final commitments returned not executed, defendants having paid fines.
- " 6 The sentence of the court is that Winfield S. Martin pay a fine of \$250—no costs (S)
- " " Final commitment issued
- " 13 Final commitments returned as defendants paid fine for the following:
W. S. Martin, Electrical Contractors Assn. of Pgh. and Robt. C. Carmack.
-

Indictment.

No. 10,462 Criminal

Filed November 3, 1939.

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In the May Term 1939.

The Grand Jurors of the United States of America, duly impaneled, sworn and charged to inquire of crimes and offenses within the body of the Western District of Pennsylvania and so inquiring, upon their oaths present:

1. That during all of the time hereinafter mentioned, the Electrical Contractors Association of Pittsburgh, Inc., was a Pennsylvania corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business at Pittsburgh, Pennsylvania;

2. That during all or a part of the time hereinafter mentioned, the following named persons were engaged in the business of electrical contracting, carrying on business in and about Pittsburgh, Pennsylvania, that is to say;

That William F. Hess was President of Hess and Barton; Edward B. Sargent was owner of Sargent Engineering Company; Robert N. Morris was owner of Morris Engineering Company; John R. Williams was Vice President of Lord Electric Company; Walter F. Weberg and J. R. Walter were partners doing business as Fort Pitt Electric Company; Thomas G. Hodgdon was President, and Thomas G. Hodgdon, Jr., was Secretary of Franklin Electric & Construction Company; Benjamin Raphael and Israel Raphael were partners doing business as Raphael Electric Company; C. W. Ridinger, Sr. was President, Warren I. Bickford was Secretary and Treasurer, and C. W. Ridinger, Jr., was Manager of the

Iron City Engineering Company; Edwin C. Carter was President of Carter Electric Company; James V. Burke was President of Craig Electric Company; G. L. Craig was Secretary and William S. Taczanowsky was President of G. L. Craig Electric Company; Charles M. Cronenweth was owner of Cronenweth Electric Company; John E. Hale was owner of Hale Electric Company; William C. Hemmerle was owner of W. C. Hemmerle Electric Company; Ralph M. Morganstern was President of Morganstern Electric Company, Inc.; Max Daniels was President of Daniels Electric Construction Company; James C. Devlin was owner of Devlin Electric Construction Company; Norman B. Leeke was owner of Diamond Electric Company; Herbert D. Hale was owner of H. D. Hale Electric Company; Alvin S. MacNeil was President and Robert B. Yates was Vice President of MacNeil Electric Company; Winfield S. Martin and M. J. Murray were partners doing business as Martin and Murray; James A. Rodden was owner of Rodden Electric Company; Donald R. Ross was owner of D. R. Ross Electric Company; Richard W. Schindler was owner of R. W. Schindler Electric Company; Walter C. Gloekler was President of Star Electric & Construction Company; James H. Stauffer was owner of Stauffer Electric Company; K. K. Wood operated as an electrical contractor under his own name; H. L. Fullerton was President of Industrial Electric Company; Louis H. Berkman operated as an electrical contractor under his own name; John W. Craig was owner of J. W. Craig Electric Company; R. G. Diodati was owner of R. G. Diodati and Bro.; Irwin J. Levinson was owner of Levinson Electric Company; Bernard A. Ross was owner of Ross Electric Company; and were members of said Electrical Contractors' Association of Pittsburgh, Inc.;

3. That William F. Hess, President of said Electrical Contractors' Association of Pittsburgh, Inc. and Rob-

ert C. Carmack, Manager thereof, were active in the direction of said Association's affairs;

4. That Local Union Number 5, International Brotherhood of Electrical Workers is an unincorporated labor union and association, chartered by and operating under the jurisdiction of the International Brotherhood of Electrical Workers of America, and that John Bradley, President; Michael P. Gordon, Business Manager and William G. Shord, Financial Secretary, of said Local Union Number 5, are active in the management and direction of its affairs;

5. That for the purposes of relieving destitution, providing relief, creating and increasing employment, expediting a Public Works program and providing for work upon and construction of useful Public Works and projects, the Congress of the United States enacted the following named Acts and Joint Resolutions, to wit:

The Emergency Relief and Construction Act of 1932 (47 Statutes at Large, 709) approved July 21, 1932; The Federal Emergency Relief Act of 1933 (48 Statutes at Large, 55) approved May 12, 1933; The National Industrial Recovery Act (48 Statutes at Large, 195) approved June 16, 1933; The Emergency Relief Appropriation Act of 1935 (49 Statutes at Large, 115) approved April 8, 1935; The Emergency Relief Appropriation Act of 1936 (49 Statutes at Large, 1608) approved June 22, 1936; The Emergency Relief Appropriation Act of 1937 (50 Statutes at Large, 352) approved June 29, 1937; The Public Works Administration Extension Act of 1937 (50 Statutes at Large, 357) approved June 29, 1937; The Work Relief and Public Works Appropriation Act of 1938 (52 Statutes at Large, 809) approved June 21, 1938;

And pursuant to such Acts and Resolutions and to the orders and rules promulgated under their authority, certain sums of money were appropriated for the purposes declared in such Acts and Resolutions, and out of

said sums of money there were allocated certain sums of money to aid in the alteration, repair and construction of buildings for public schools, hospitals, playgrounds and other similar construction projects in and about the City of Pittsburgh and the County of Allegheny in the Western District of Pennsylvania, which projects, by names and descriptions so far as they are known to your Grand Jurors are:

Here follows a list of projects identical with that contained in Exhibit A to the Complaint printed at Appendix pages 21-32, except that instead of the Municipal Hospital there is included the Highland Park Bridge, Pa. 2976 Contract 406, the awarding authority, sponsor and owner of which was the Allegheny County Authority, a Pennsylvania corporation, for which there was a loan from the PWA of \$990,000 and a grant of \$1,836,000.

6. That for the purpose of aiding each of said projects, a grant of money not to exceed the amount set opposite the name and description of each project in Paragraph 5 above was made by the United States of America through the Federal Emergency Administration of Public Works (commonly referred to as the Public Works Administration) to the owner (sponsor, awarding authority) whose name appears opposite the name and description of each project in Paragraph 5 above;

7. That for the purpose of letting the contracts for the electrical work, and other work in connection with said projects, and each of them, the awarding authority of each such project, sometimes herein also referred to as the "owner" or as the "sponsor", theretofore advertised and called for bids from persons seeking to obtain electrical and other contracts for the performance of the work called for by said projects;

8. That,

Hess and Barton, a Pennsylvania Corporation

William F. Hess

Edward B. Sargent

Robert N. Morris

Lord Electric Company, a Delaware Corporation

John R. Williams

Walter F. Weberg

J. R. Walter

Franklin Electric & Construction Company, a Pennsylvania Corporation

Thomas G. Hodgdon

Thomas G. Hodgdon, Jr.

Benjamin Raphael

Israel Raphael

Iron City Engineering Company, a Pennsylvania Corporation

C. W. Ridinger, Jr.

C. W. Ridinger, Sr.

Warren I. Bickford

Carter Electric Company, a Pennsylvania Corporation

Edwin C. Carter

Craig Electric Company, a Pennsylvania Corporation

James V. Burke

G. L. Craig Electric Company, a Pennsylvania Corporation

G. L. Craig

William S. Taczanowsky

Charles M. Cronenweth

John E. Hale

William C. Hemmerle

Morganstern Electric Company, Inc., a Pennsylvania Corporation

Ralph M. Morganstern

Daniels Electric Construction Company, a
Pennsylvania Corporation

Max Daniels

James C. Devlin

Norman B. Leeke

Herbert D. Hale

MacNeil Electric Company, a Pennsylvania
Corporation

Alvin S. MacNeil

Robert B. Yates

Winfield S. Martin

M. J. Murray

James A. Rodden

Donald R. Ross

Richard W. Schindler

Star Electric & Construction Company, a Penn-
sylvania Corporation

Walter C. Gloekler

James H. Stauffer

K. K. Wood

Industrial Electric Company, a Pennsylvania
Corporation

H. J. Fullerton

Louis H. Berkman

John W. Craig

R. G. Diodati

Irwin J. Levinson

Bernard A. Ross

Electrical Contractors Association of Pitts-
burgh, Inc., a Pennsylvania Corporation

Robert C. Carmack

Michael F. Gordan

William G. Shord

John Bradley

hereinafter sometimes referred to as the Defendants,
throughout a period of time beginning on or about the

first day of January in the year of our Lord one thousand nine hundred and thirty-five and continuing each and every day thereafter until the return of this indictment into this Court, at Pittsburgh, in the County of Allegheny, in the Western District of Pennsylvania, and within the jurisdiction of this Court, did knowingly, willfully, unlawfully and feloniously conspire, combine, confederate, agree and have a tacit understanding together and with each other and with divers other persons unknown to your Grand Jurors to defraud the United States, that is to say;

9. That, while keeping up an appearance of competition and conveying to awarding authorities the idea and belief that said Defendant Electrical Contractors were rival bidders, the Defendants agreed that they would abate honest rivalry, avoid and prevent competition, deceive the awarding authorities, prevent transmission to awarding authorities of bids and, in effect, secure in advance the awarding of contracts to one of the Defendant Electrical Contractors selected by them; and so defeat the plain intent and purposes of said Acts and Resolutions and defraud the United States, all to the mutual profit of the Defendants, the injury and damage of the United States, the selfish destruction of the public interest and the impairment of governmental functions and the discredit of public officials;

That on numerous occasions, the exact numbers and dates of which are unknown to your Grand Jurors, the Defendant Electrical Contractors would each prepare his separate bid for electrical work on that one of the projects described in Paragraph 5 hereof on which bids were then being invited and they would and they did all meet together in and at the offices of said Association in the Union Trust Building in Pittsburgh, Pennsylvania, and thereupon each would and did disclose to all present, the amount of his proposed bid, an average of the proposed bid price would be obtained and the bidder.

whose bid price was nearest the average would be selected as the person to submit the low bid to the awarding authority, whereupon all other Defendant Electrical Contractors desiring to bid would so adjust their bid figures and amounts as to make the bid of the person so selected the lowest;

That on other numerous occasions, the exact numbers and dates of which are unknown to your Grand Jurors, said Defendant Electrical Contractors desiring to bid on electrical work on that one of the projects described in Paragraph 5 hereof, for which bids were then being invited would and they did transmit their intended bids, by mail or otherwise, to said Association at its offices aforesaid where, on some occasions, the numbers and dates of which are unknown to your Grand Jurors, Defendant Robert C. Carmack would and he did either average said bids and choose, select and appoint the person who was to thereafter submit the low bid to the awarding authority, or a committee of members of said Association, whose names are unknown to your Grand Jurors would and they did choose, select and appoint the person who was to submit the low bid to the awarding authority;

That on other numerous occasions, the exact numbers and dates of which are unknown to your Grand Jurors, said Defendant Electrical Contractors desiring to bid on electrical work on that one of the projects described in Paragraph 5 hereof, for which bids were then being invited would and they did meet at the William Penn Hotel or the Roosevelt Hotel or the Fort Pitt Hotel in Pittsburgh, Pennsylvania and agree amongst themselves as to who should submit the low bid;

And it was further part of said conspiracy that, after making such selection by whatever method used, and in order to effectuate the same and procure the awards of contracts to the person chosen, selected and appointed, the Defendant Electrical Contractors would

and they did alter, change, decrease, increase, and adjust their proposed bid prices in such manner as that, when said Defendant Electrical Contractors thereafter submitted their bids to the awarding authority, that of the person theretofore so selected, chosen and appointed would be the lowest of all those submitted;

And it was a further part of said conspiracy that Defendants William F. Hess, Robert C. Carmack, John Bradley, Michael P. Gordan, and William G. Shord, by intimidation, by bribes and offers of bribes, by threatening to call strikes, by calling strikes, by imposition of fines and penalties and by threats of present and future injury to business would and they did seek to prevent and prevent non members of said Electrical Contractors Association of Pittsburgh, Inc. from transmitting or submitting any bids to the awarding authority and would and they did seek to prevent and prevent members thereof from submitting or transmitting bids to the awarding authority other than by the manners and means hereinbefore in Paragraph 9 fully described;

10. And so the Grand Jurors aforesaid, upon their oaths aforesaid, do find and present that the said Defendants, and each of them did so willfully, unlawfully, corruptly and feloniously conspire, combine, confederate, agree and have a tacit understanding that they would;

(a) defraud the United States of large sums of money, the exact amounts of which are unknown to your Grand Jurors, but being up to 45% of the difference between the prices and amounts which would have been bid except for the existence of said conspiracy and the prices and amounts actually bid by said conspirators;

(b) defraud the United States by avoiding and preventing competitive bidding, deceiving awarding authorities charged with making awards, in effect securing in advance the awarding of contracts to one of Defend-

ants selected by them on Federal Aid Projects and so defeating the plain intent and purpose of the Acts and Resolutions of Congress hereinbefore enumerated and impairing the governmental functions of the Department of the Interior and of the Federal Emergency Administration of Public Works (commonly referred to as the Public Works Administration), an agency of the United States;

11. And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present and find that certain of the said Defendants herein designated, at the several times and places hereinafter mentioned did perform divers overt acts, each of which was done in pursuance of, in execution of and to effect, employ and accomplish the objects, designs and purposes of the said willful, unlawful, corrupt and felonious conspiracy, combination, confederation, agreement and understanding, some, but not all of which overt acts were;

OVERT ACTS

1.

That on or about the 22nd day of December, 1938, the defendant, William F. Hess, submitted to Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the South Vocational High School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

2.

That on or about the 6th day of February, 1938, the defendant, Edward B. Sargent, prior to the official bid opening, attended a meeting of interested bidders for an electrical contract on the Western Penitentiary, Pittsburgh, Pennsylvania, and discussed and arrived at

the figure which he used in bidding on said project, pursuant to the association procedure described.

3.

That on or about the 6th day of December, 1938, the defendant, Robert N. Morris, submitted to the School District of the Borough of West View, Allegheny County, Pennsylvania, a bid for an electrical contract on the West View High School, West View, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

4.

That on or about the 27th day of June, 1939, the defendant, John R. Williams, submitted to the City of Pittsburgh, Allegheny County, Pennsylvania, a bid for an electrical contract on the Leech Farm Tuberculosis Sanitarium, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

5.

That on or about the 20th day of October, 1938, the defendant, Walter F. Weberg, submitted to the School District of the Township of Mifflin, Allegheny County, Pennsylvania, a bid for an electrical contract on the Homeville Junior High School, Mifflin Township, Allegheny County, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

6.

That on or about the 1st day of September, 1938, the defendant, Thomas G. Hodgdon, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical con-

tract on the Schiller Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

7.

That on or about the 8th day of August, 1938, the defendant, Benjamin Raphael, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract, on the Crescent Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

8.

That on or about the 11th day of August, 1938, the defendant, C. W. Ridinger, Sr., signed and submitted to the Board of County Commissioners, Allegheny County Court House, Pittsburgh, Pennsylvania, a bid for an electrical contract on the Highland Park Bridge, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

9.

That on or about the 11th day of August, 1938, and prior to the official bid opening, the defendant, C. W. Ridinger, Jr., on behalf of defendant, C. W. Ridinger, Sr., submitted a cost estimate to, and obtained a bidding price from a meeting of members of the said Association interested in submitting bids for an electrical contract on the Highland Park Bridge, Pittsburgh, Pennsylvania.

10.

That on or about the 20th day of July, 1938, the defendant, Edwin C. Carter, submitted to the Board of

Public Education of the School District of Pittsburgh Pennsylvania, a bid for an electrical contract on the Whittier Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

11.

That on or about the 18th day of November, 1938, the defendant, James V. Burke, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Spring Garden Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

12.

That on or about the 16th day of September, 1938, the defendant, G. L. Craig, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Concord Elementary School of Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

13.

That on or about the 16th day of September, 1938, the defendant, William Taczanowsky, signed and submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Concord Elementary School of Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

14.

That on or about the 16th day of September, 1938, and prior to the official bid opening, the defendant, G. L. Craig, submitted a cost estimate to and obtained a bidding figure from the office of the said Association, which figure was used in the proposal submitted for an electrical contract on the Concord Elementary School of Pittsburgh, Pennsylvania.

15.

That on or about the 18th day of August, 1938, the defendant, Charles M. Croneweth, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Arsenal Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

16.

That on or about the 8th day of February, 1938, the defendant, John E. Hale, submitted to the General State Authority, Harrisburg, Pennsylvania, a bid for an electrical contract on the Western Penitentiary, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

17.

That on or about the 8th day of August, 1938, the defendant, William C. Hemmerle, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Crescent Elementary School of Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

18.

That on or about the 18th day of October, 1938, the defendant, Ralph M. Morganstern, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Girls Vocational High School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

19.

That on or about the 18th day of October, 1938, the defendant, Max Daniels, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Girls Vocational High School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

20.

That on or about the 21st day of July, 1939, the defendant, James C. Devlin, submitted to the City of Pittsburgh a bid for an electrical contract on the West Penn Playground, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

21.

That on or about the 20th day of October, 1938, the defendant, Norman B. Leeke, submitted to the School District of the Township of Mifflin, Allegheny County, Pennsylvania, a bid for an electrical contract on the Homeville Junior High School, Homeville, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

22.

That on or about the 21st day of July, 1939, the defendant Herbert D. Hale, submitted to the City of Pittsburgh, a bid for an electrical contract on the Field House, Cowley-Goettman Playground, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

23.

That on or about the 9th day of March, 1939, the defendant, Alvin S. MacNeil, submitted to the Board of County Commissioners, Allegheny County Court House, Pittsburgh, Pennsylvania, a bid for an electrical contract on the Traffic Grade Separation, East Ohio Street, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

24.

That on or about the 8th day of November, 1938, the defendant, Winfield S. Martin, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Miller Elementary School of Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

25.

That on or about the 26th day of September, 1938, the defendant, James A. Rodden, submitted to the School District of the City of McKeesport, Allegheny County, Pennsylvania, a bid for an electrical contract on The East End Elementary School, McKeesport, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

26.

That on or about the 25th day of June, 1937, the defendant, Donald R. Ross, submitted to the Borough of Braddock, a bid for an electrical contract on the Filtration Plant, Braddock, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

27.

That on or about the 18th day of January, 1939, the defendant, Richard W. Schindler, submitted to the School District of the Borough of Bridgeville, Allegheny County, Pennsylvania, a bid for an electrical contract on the Lincoln and Washington School Buildings, Bridgeville, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

28.

That on or about the 28th day of October, 1938, the defendant, Walter C. Gloekler, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the West Liberty Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

29.

That on or about the 28th day of October, 1938, the defendant, James H. Stauffer, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the West Liberty Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

30.

That on or about the 7th day of November, 1938, the defendant, H. L. Fullerton, submitted to the Ross Township, School District, Pennsylvania, a bid for an electrical contract on the Siebert School, Bellevue, Allegheny County, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

31.

That on or about the 16th day of September, 1938, the defendant, K. K. Wood, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Concord Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

32.

That on or about the 3rd day of November, 1938, the defendant, Louis H. Berkman, submitted to the City of Pittsburgh, a bid for an electrical contract on the Field House, McGee Playground, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

33.

That on or about the 3rd day of October, 1938, the defendant, John W. Craig, submitted to the City of Pittsburgh, a bid for an electrical contract on the Swimming Pool, Burgwin Playground, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

34.

That on or about the 3rd day of November, 1938, the defendant, R. G. Diodati, submitted to the City of Pittsburgh, a bid for an electrical contract on the Field House, McGee Playground, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

35.

That on or about the 29th day of August, 1938, the defendant, Irwin J. Levinson, submitted to the Borough of Blawnox, Pennsylvania, a bid for an electrical contract on the Municipal Building, Blawnox, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

36.

That on or about the 19th day of November, 1936, the defendant, Bernard A. Ross, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Prospect Junior High School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

37.

That on or about the 27th day of June, 1939, the defendant, J. R. Walter, signed a bid for an electrical contract on the Leech Farm Tuberculosis Sanitarium, Pittsburgh, Pennsylvania, submitted to the City of Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

38.

That on or about the 8th day of August, 1938, the defendant, Israel Raphael, signed and submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, a bid for an electrical contract on the Crescent Elementary School, Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

39.

That on or about the 18th day of March, 1938, the defendant, Robert B. Yates, signed a bid for an electrical contract on the Filter Houses at the Kline, Arlington and Paulson Swimming Pools, Pittsburgh, Pennsylvania, submitted to the City of Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

40.

That on or about the 1st day of September, 1938, the defendant, M. J. Murray, signed a bid for an electrical contract on the Schiller Elementary School, Pittsburgh, Pennsylvania, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, containing a price which was not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

41.

That on or about the 1st day of September, 1938, the defendant, Thomas G. Hodgdon, Jr., signed a bid for an electrical contract on the Schiller Elementary School, Pittsburgh, Pennsylvania, submitted to the Board of Public Education of the School District of Pittsburgh, Pennsylvania, containing a price which was

not bona fide but had been arrived at through the unlawful association procedure hereinbefore described.

42.

That on or about the 1st day of September, 1938, the defendant, Robert C. Carmack, prior to the official bid opening, notified each proposed bidder for an electrical contract on the Schiller Elementary School, Pittsburgh, Pennsylvania, by handing each of them a slip of paper containing a price, or otherwise notified each of them, of the price each was to submit at the official bid opening for said electrical contract.

43.

That on or about January 1, 1939, the defendant, Michael P. Gordon, was present at a meeting of the members of the Electrical Contractors Association of Pittsburgh, Inc., at the William Penn Hotel, Pittsburgh, Pennsylvania, at which time he informed those present that they should cooperate with each other and carry out their understandings, and stated that he would police the industry.

44.

That on or about the 1st day of July, 1939, the defendant, William G. Shord, caused the defendant, William F. Hess to come to the office of the former in Pittsburgh, Pennsylvania, to explain the membership requirements of the Electrical Contractors Association of Pittsburgh, Inc. to an independent electrical contractor.

45.

That on or about the 27th day of June, 1939, defendant, William G. Shord, called a strike on the Arsenal Elementary School on work of a contractor who had not complied with the understanding hereinbefore described in reference to the association bidding procedure.

Contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the United States.

A true bill:

G. W. SHAFFER,
Foreman.

GEORGE MASHANK,
Acting United States Attorney.

M. NEIL ANDREWS,
PERRY WATZMAN,
R. McDONALD GRAY,
*Special Assistants to the
Attorney General.*

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

The United States	}	No. 10463 Criminal Dkt.
v.		
Franklin Electric & Construction Co., a Pa. Corp., and Thomas G. Hodgdon		

Excerpts From Docket Entries.

1939

Nov. 6,	True Bill
" "	Indictment filed

1940

Feb. 15	Motion and Order for nolle pros. filed
" "	Nolle pros. is hereby entered

G. H. Berger,
Clerk.

Indictment.

No. 10,463 Criminal.

Filed November 6, 1939.

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Of May Term, A. D. 1939

Western District of Pennsylvania, ss:

The Grand Jurors of the United States of America, duly impaneled, sworn and charged to inquire of crimes and offenses within and for the body of Western District of Pennsylvania, and so inquiring, upon their oaths, present:

1. That heretofore, to wit, on or about the 22nd. day of December, in the year of our Lord, one thousand nine hundred and thirty-eight at P.ittsburgh, Pa., in the County of Allegheny, in the Western District of Pennsylvania, and within the jurisdiction of this Court, Franklin Electric & Construction Company, a Pennsylvania Corporation and Thomas G. Hodgdon and hereafter referred to as the defendant, did knowingly, wilfully and feloniously make, use and cause to be made and used, a certain false certificate knowing the same to contain fraudulent and fictitious statements in a matter within the jurisdiction of a Department and Agency of the United States, that is to say:

2. The Department and Agency of the Government of the United States was the Federal Emergency Administration of Public Works (commonly known as the Public Works Administration and hereafter so referred to), created and existing by virtue of the provisions of Title II of the National Industrial Recovery Act (Sections 201, et seq.; 40 U. S. C. A., Sec. 401, et seq.), and the Rules and Orders promulgated under the authority thereof;

3. Said Public Works Administration financed in part, through grant of funds of said Department, construction of a civilian project known as Federal Public Works Project, No. Docket Pa. 1907-F more particularly known as South Vocational High School and a public building in Pittsburgh, Pa. which athletic field construction was also financed in part, by funds made available by the Board of Public Education of the School District of Pittsburgh, Pa.

4. The partial financing of the construction of said public building and property and the actual construction thereof were matters within the jurisdiction of said Public Works Administration, an Agency and Department of the United States;

5. On or about the 22nd day of December, in the year of our Lord, one thousand nine hundred and thirty-eight, said Board of Public Education of the School District, Pittsburgh, Pa., hereinafter referred to as the Awarding Authority, invited sealed Proposals (bids) containing certification that said Proposal was genuine and not sham or collusive, for general construction, heating and ventilating, electrical and other contracts in connection with the construction of said public building and property;

6. On or about the 22nd day of December in the year of our Lord, one thousand nine hundred and thirty-eight

Franklin Electric & Construction Company,
a Pennsylvania Corporation and

Thomas G. Hodgdon

the defendant aforesaid (sic.), response to said invitation submitted to said Board of Public Education of the School District, Pittsburgh, Pa., in said Western District of Pennsylvania, their written Proposal (bid) for the electrical work for said South Vocational High School and Athletic Field, and in connection therewith, and as a part thereof, did wilfully, knowingly and felo-

niously execute a certain certificate and writing in words and figures substantially as follows:

Federal Public Works Project No. Docket 1907-F
* * *

"The undersigned hereby certifies that this Proposal is genuine, and not sham or collusive, or made in the interest or in behalf of any person, firm or corporation not herein named; and that the undersigned has not, directly or indirectly induced or solicited any other bidder to submit a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the undersigned has not in any manner sought by collusion to secure for himself an advantage over any other bidder.

December 22, 1938

Firm name: Franklin Electric and Construction Company

By: Thomas C. Hodgdon

Title: President

Official Address: 117 First Ave., Pittsburgh, Penna."

which said certificate was and is false and contains fraudulent and fictitious statements and entries in the following respects:

7. The statement in said certificate that "this Proposal is genuine and not sham or collusive" is false, fictitious, fraudulent and misleading because the defendants are affiliated, as members, with the Electrical Contractors' Association of Pittsburgh, which Association requires its members to submit their bids to the Association prior to submitting them to the Awarding Authority, whereupon such bids were, by said Association, collusively compared, altered, decreased or increased according to the dictates of said Association, and said Proposal so submitted by said defendant contains a bid price of Sixty two thousand two hundred sixty-eight

dollars (\$62,268.00) which figures and amounts were so collusively fixed by said defendant and said Association; and

8. Said defendant knowingly, wilfully and feloniously made and caused to be made said false certificate, hereinbefore in paragraph 6 described, knowing the same to contain fraudulent and fictitious statements, hereinbefore in paragraph 7 described, in the matter of the construction of said South Vocational High School and Athletic Field project, a matter within the jurisdiction of the Public Works Administration, a Department and Agency of the United States, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT.

And the Grand Jurors aforesaid, upon their oaths aforesaid, further present and find:

9. That heretofore, to wit, on or about the 10th day of August, in the year of our Lord, one thousand nine hundred and thirty-nine, at Pittsburgh, Pa., in the County of Allegheny, in the Western District of Pennsylvania, and within the jurisdiction of this Court, Franklin Electric & Construction Company a Pennsylvania corporation and Thomas G. Hodgdon and hereafter referred to as the defendant, did knowingly, wilfully and feloniously make, use and cause to be made and used, a certain false certificate knowing the same to contain fraudulent and fictitious statements in a matter within the jurisdiction of a Department and Agency of the United States, that is to say:

10. The Department and Agency of the Government of the United States was the Federal Emergency Administration of Public Works (commonly known as the Public Works Administration and hereafter so referred to), created and existing by virtue of the pro-

visions of Title II of the National Industrial Recovery Act (Sections 201, et seq.; 40 U. S. C. A., Sec. 401, et seq.), and the Rules and Orders promulgated under the authority thereof;

11. Said Public Works Administration financed in part, through grant of funds of said Department, construction of a civilian project known as Pa. P.W.A. Project No. PA 2218-F more particularly known as Municipal Hospital, a public building in Pittsburgh, Pa., which construction was also financed in part, by funds made available by the City of Pittsburgh, Pittsburgh, Allegheny County, Pennsylvania;

12. The partial financing of the construction of said Municipal Hospital, and the actual construction thereof were matters within the jurisdiction of said Public Works Administration, an Agency and Department of the United States;

13. On or about the 10th day of August, in the year of our Lord, one thousand nine hundred and thirty-nine, said City of Pittsburgh (Department of Public Health), hereinafter referred to as the Awarding Authority, invited sealed Proposals (bids) containing certification that said Proposal was genuine and not sham or collusive, for general construction, heating and ventilating, electrical and other contracts in connection with the construction of said Municipal Hospital;

14. On or about the 10th day of August, in the year of our Lord, one thousand nine hundred and thirty-nine, Franklin Electric & Construction Company, a Pennsylvania Corporation, and Thomas G. Hodgdon, the defendant aforesaid, in response to said invitation, submitted to said City of Pittsburgh (Department of Public Health) at Pittsburgh, in said Western District of Pennsylvania, written Proposal (bid) for the electrical work for said Municipal Hospital, and in connection therewith, and as a part thereof, did wilfully, knowingly and

feloniously execute a certain certificate and writing in words and figures substantially as follows:

P.W.A. Project No. PA 2218-F. * * *

"The undersigned hereby certifies that this Proposal is genuine, and not sham or collusive, or made in the interest or in behalf of any person, firm or corporation not herein named, and that the undersigned has not, directly or indirectly induced or solicited any other bidder to submit a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the undersigned has not in any manner sought by collusion to secure for himself an advantage over any other bidder.

August 10, 1939

Firm Name: Franklin Electric & Construction Co.

By: Thomas G. Hodgdon

Title: President

Official Address: 117 First Ave., Pittsburgh, Penna."

which said certificate was and is false and contains fraudulent and fictitious statements and entries in the following respects:

15. The statement in said certificate that "this Proposal is genuine and not sham or collusive" is false, fictitious, fraudulent and misleading because the defendants are affiliated, as a member, with the Electrical Contractors' Association of Pittsburgh, which Association requires its members to submit their bids to the Association prior to submitting them to the Awarding Authority, whereupon such bids were, by said Association, collusively compared, altered, decreased or increased according to the dictates of said Association, and said Proposal so submitted by said defendant contains a bid price of one hundred and fifty five thousand two hundred sixty dollars (\$155,260.00), which figures and amounts

were so collusively fixed by said defendant and said Association; and

16. Said defendants knowingly, wilfully and feloniously made and caused to be made said false certificate, hereinbefore in paragraph 14 described, knowing the same to contain fraudulent and fictitious statements, hereinbefore in paragraph 15 described in the matter of the construction of said Municipal Hospital project, a matter within the jurisdiction of the Public Works Administration, a Department and Agency of the United States; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

(Signed) M. NEIL ANDREWS

(Signed) R. McDONALD GRAY

PERRY WATZMAN

Special Assistants to the
Attorney General.

GEORGE MASHANK

Acting United
States Attorney.

**UNITED STATES OF AMERICA, ex rel. MORRIS MARCUS, Plaintiffs
Versus
WILLIAM F. HESS, AND OTHERS, Defendants**

PLAINTIFFS TABULATION OF DAMAGES

PROJECT NUMBER	NAME OF PROJECT	SPONSOR	CONTRACTOR	CONTRACT PRICE	PLAINTIFFS CLAIM OF FAIR AND REASONABLE COMPETITIVE LOW BID	DAMAGES	PERCENT OF GOVERNMENT GRANT	ACTUAL DAMAGES SUFFERED BY GOVERNMENT	DAMAGES SUFFERED BY THE GOVERNMENT DOUBLE IN AMOUNT
PA 1908 F	Miller Elementary School 3572	Board of Education City of Pittsburgh	W. C. Hammerle Elec. Co.	\$ 24,182.00	\$ 14,083.10	\$10,138.90	45	\$ 4,558.00	\$ 9,116.00
PA 1819 F	Arsenal Elementary School 28.68	Board of Education City of Pittsburgh	Crosenweth Elec. Co.	32,045.00	23,887.88	8,977.12	45	1,339.71	3,079.48
PA 1303 R	Washington Trade School 43	Board of Education City of Pittsburgh	Fort Pitt Electric Co.	46,411.00	33,387.99	13,023.01	45	3,773.88	13,547.70
PA 1173 D	Prospect Jr. High School 37	Board of Education City of Pittsburgh	Crosenweth Elec. Co.	28,241.00	20,627.50	7,613.50	45	3,426.07	6,852.14
PA 1308 R	Burgwin Elementary School 30	Board of Education City of Pittsburgh	R. M. Morganstern	21,514.00	15,029.13	6,484.87	45	2,919.09	5,838.18
PA 1886 F	Schiller Elementary School 38	Board of Education City of Pittsburgh	Devlin Elec. Constr. Co.	27,720.00	16,256.08	11,463.92	45	3,126.43	6,316.86
PA 1150 R	Carnalt Elementary School 31	Board of Education City of Pittsburgh	Stauffer Elec. Co.	7,840.00	5,785.05	2,054.95	45	933.72	1,867.44
PA 1909 F	South Vocational High School 39	Board of Education City of Pittsburgh	Hess and Barton	26,403.00	25,161.95	23,241.05	45	5,345.44	11,090.92
PA 2016 F	Spring Garden Elementary School 4076	Board of Education City of Pittsburgh	Hedden Elec. Co.	23,235.00	14,039.88	9,205.12	45	4,141.43	8,282.86
PA 1317 R	Banksville Elementary School 29	Board of Education City of Pittsburgh	R. W. Schindler Elec. Co.	8,386.40	7,882.77	475.63	45	241.12	482.24
PA 1156 R	Spring Hill Elementary School 41	Board of Education City of Pittsburgh	Hedden Elec. Co.	8,940.00	6,843.45	2,096.55	45	943.44	1,886.88
PA 1897 F	Concord Elementary School 32.61	Board of Education City of Pittsburgh	Fort Pitt Elec. Co.	26,015.00	18,919.54	7,095.46	45	2,592.03	5,184.10
PA 1818 F	Crescent Elementary School 33.70	Board of Education City of Pittsburgh	Morganstern Elec. Co.	24,940.00	20,348.73	14,597.27	45	3,568.77	13,137.54
PA 1899 R	Perry Athletic Field House 36	Board of Education City of Pittsburgh	J. W. Craig Elec. Co.	948.00	843.82	104.18	45	46.88	93.76
PA 7501	Juvenile Court 42	Allegheny County	S. L. Craig Elec. Co.	21,219.00	17,971.14	3,247.86	30	1,094.38	2,188.76
PA 4242	County Home - Woodville 42	"	Hess and Barton	400,974.00	261,944.54	139,029.46	30	41,702.63	83,405.26
PA 7000 R	Municipal Airport - A B C D E 43	"	Sargent Engr. Co.	65,878.00	47,838.78	17,848.22	45	7,939.00	15,878.00
PA 7000 R	Municipal Airport - F 43	"	Sargent Engr. Co.	45,912.00	31,332.84	14,579.16	45	6,560.61	13,121.22
PA 7000 R	North Park Bath House 43	"	Morris Engr. Co.	16,908.00	13,187.33	3,720.67	45	1,673.40	3,346.80
PA 9416	North Park Bath House 43	"	MacNeil Elec. Co.	5,595.90	4,231.48	1,364.42	45	613.49	1,226.98
PA 1920 F	West View High School 43	Board of Education City of Pittsburgh	Fort Pitt Electric Co.	26,680.00	22,214.14	10,435.86	45	4,696.12	9,392.24
PA 1049	Hampton School - Additional 44	School District of West View	Carter Electric Co.	3,180.00	2,543.08	636.92	45	343.11	786.22
PA 1144	North Fayette High School 44	School District of Hampton Twp.	Carter Electric Co.	5,764.00	4,490.81	1,273.19	45	573.53	1,147.06
PA 1892 D.S.	Bradnock Jr. High School 43	School District of N. Fayette Twp.	Crosenweth Elec. Co.	26,618.00	22,784.97	7,833.03	45	1,087.38	2,174.76
PA 1130	Westinghouse Memorial High School 45	School District of Bradnock	Morris Engr. Co.	26,672.00	22,609.44	14,071.56	45	6,338.80	12,677.60
PA 1598	Kemper School 46	School District of Wilmerding	J. W. Craig Elec. Co.	2,192.00	2,049.70	142.30	45	55.03	110.06
PA 1456	Bawin Martham School 46	School District of Kennedy	Stauffer Elec. Co.	3,985.00	3,852.57	332.43	45	149.59	299.18
PA 1903 D.S.	Crafton Municipal Bldg. 47	School District of St. Lebanon Twp.	Diamond Elec. Co.	5,735.00	3,995.10	2,139.90	45	962.95	1,925.90
PA 1454	Lincoln School Bldg. - St. Lebanon 47	School District of St. Lebanon	Hess Elec. Co.	1,048.00	872.99	192.01	45	86.40	172.80
PA 1578	Filtration Plant - Bradnock 48	School District of Bradnock	Hess Elec. Co.	11,180.00	7,922.48	3,257.52	45	1,452.38	2,904.76
PA 2224 F	Shaler Twp. Softening Plant 48	Twp. of Shaler	H. D. Hale Elec. Co.	4,800.00	4,678.88	1,221.12	45	544.51	1,089.02
PA 1544	Library School 49	School District of Snowden Twp.	H. D. Hale Elec. Co.	4,200.00	3,539.88	660.12	45	297.14	594.28
PA 1977 F	Seibert School 50	School District of Snowden Twp.	Industrial Elec. Co.	2,587.00	1,934.57	652.43	45	283.69	567.38
PA 1189	School Building - Chalfonte 51	School District of Ross Twp.	H. D. Hale Elec. Co.	3,126.00	2,441.21	684.79	45	313.55	627.10
PA 1833 F	Cowley-Goodman Playground 52	City of Pittsburgh	K. E. Wood	7,432.00	4,498.63	2,933.37	45	1,321.34	2,642.72
PA 1800 F	Sophie Evert No. 4 Playground 52	"	R. G. Diodati	1,084.00	529.14	554.86	45	77.69	155.38
PA 1800 F	Schenley Park Comfort Station 52	"	L. A. Berkman	1,387.00	880.28	506.72	45	83.08	166.16
PA 1800 F	Garfield Play. Field House 52	"	Levenson Elec. Co.	1,148.00	551.50	596.50	45	86.31	172.62
PA 1800 F	Townsend Play. Field House 52	"	L. A. Berkman	455.00	258.79	196.21	45	28.89	57.78
PA 1800 F	Larimer Play. Field House 52	"	Levenson Elec. Co.	471.00	259.79	211.21	45	31.26	62.52
PA 1800 F	Armstrong Play. Field House 52	"	L. A. Berkman	1,185.00	599.12	585.88	45	86.78	173.56
PA 1833	Hague Playground 52	"	R. G. Diodati	5,319.00	3,462.88	1,856.12	45	835.28	1,670.56
PA 1987	West Penn Playground 52	"	Devlin Elec. Co.	9,632.00	6,999.00	2,633.00	45	1,454.85	2,909.70
PA 1987	Homewood, etc. Filter Houses 52	"	Levenson Elec. Co.	3,990.00	2,324.03	1,665.97	45	704.60	1,409.20
PA 1800 F	Sophie Evert No. 1 Field House 52	"	Hess Electric Co.	886.00	413.43	472.57	45	70.24	140.48
PA 1800 F	Makinsley Park F. H. 52	"	L. A. Berkman	442.00	221.57	220.43	45	20.79	41.58
PA 2208	Schenley, etc. Filter Houses 52	"	L. A. Berkman	2,525.00	1,493.83	1,031.17	45	464.02	928.04
PA 1834	Burgwin Playground 52	"	J. W. Craig Elec. Co.	4,870.00	2,827.82	2,042.18	45	905.87	1,811.74
TOTAL				\$ 1,108,370.00	\$ 747,486.71	\$ 360,883.29		\$ 126,636.47	\$ 253,272.94

* ASTERISK INDICATES FIGURES ARE NET AFTER DEDUCTION. AMOUNT WITHHELD BY THE GOVERNMENT

Defendants' Points.

The defendants other than Robert C. Carmack, jointly and severally, respectfully request the Court to charge the jury as follows:

1. Under the law and the evidence in this case the verdict must be in favor of each of said defendants.

The grounds therefor are as follows:

(1) The defendants cannot be subjected to forfeitures, penalties or double damages in the present action, because they have already been punished for the same offenses by fines in criminal proceedings.

(2) The Informers Act, being R. S. §§ 3490 to 3494, upon which this suit is based, does not authorize, and will not support, such a suit as this one.

(3) The necessary authorization or sanction by government officials for the institution or prosecution of this suit has not been obtained or shown.

(4) The relator, Marcus, was not an informer and, therefore, is not entitled to maintain this suit.

(5) With respect to the corporate defendants, there is the further reason that the Informers Act upon which this suit is based does not apply to them or warrant a recovery under its provisions against corporations.

(6) There is a misjoinder of actions and parties in that no conspiracy has been proven which involves all of the defendants.

(7) As to the defendants C. W. Ridinger, Sr., Warren I. Bickford and Robert B. Yates, there is the further reason that there is not sufficient evidence that they participated in the alleged conspiracy or that they violated R. S. § 5438.

(8) There is not sufficient evidence on which to assess or by which to measure any damages. It is impossible to tell from the evidence how much the Federal

Points for Charge.

Government paid out because of the alleged offenses of the defendants, which it would not have paid out in the absence of such acts of the defendants. Refused.

Defendant's Point.

The defendant, C. W. Ridinger, Sr., respectfully requests the Court to charge the jury as follows:

1. Under the law and the evidence in this case the verdict must be in favor of the defendant, C. W. Ridinger, Sr.

For the grounds for this motion see the joint and several motion of the defendants other than Robert C. Carmack for a directed verdict in favor of each of them, which grounds are hereby incorporated in this motion as fully as if set forth at large herein. Refused.

(A similar point was filed by each other defendant, except Carmack.)

Points for Charge.

The defendants other than Robert C. Carmack respectfully request the Court to charge the jury as follows:

1. If you find for the plaintiff, there can be only one penalty or forfeiture of \$2,000 included in your verdict in this case. Refused.

2. Each defendant in this case can be held liable only for the damages, if any, which were sustained by the Federal Government on jobs on which that particular defendant bid or on which he refrained from bidding because of conspiring with others. Refused.

3. Each and every defendant in this case is presumed to be innocent until proved otherwise. Refused.

4. The burden of proof is upon the plaintiff in this

case to convince you beyond a reasonable doubt; not merely by a preponderance of the evidence. Refused.

4½. If the jury finds that the defendants have already been punished for the acts complained of in this action, they may not be penalized the second time either by double damages, forfeitures or penalties. Refused.

5. No inference against the defendants may be drawn from the fact that they refused to testify, because in so doing they were merely exercising a right which the United States Constitution gives them. Affirmed.

6. In no event would the Federal Government be entitled to the whole of the difference between what the contract was let at and Proctor's estimate, but only to 30% or 45% of such alleged damages depending on the percentage which the Government agreed to grant on each respective project. Affirmed.

7. If the maximum limit of the Federal Government's agreed contribution on any project would have been reached without the alleged excessive amount of the electrical contract, there can be no recovery of any damages on account of such projects in this case. Refused.

8. There can be no recovery of any damages because of any payments made upon periodic estimates for partial and final payment, known as I 23 forms, which were submitted by contractors after February 5, 1940. Refused.

9. There can be no recovery of any penalty or forfeiture on account of any project in which no actual damages have been shown. Refused.

10. Where the United States Government has since February 5, 1940, paid any sponsor an amount in excess of the amount of the percentage of alleged damages to which the Government would be entitled, there can be no recovery on that particular project. Refused.

11. No damages can be recovered in this case on account of the County Home job at Woodville. Refused.

12. No damages can be recovered in this case on account of the Spring Garden Elementary School job. Refused.

13. No damages can be recovered in this case on account of the Magee Playground Bath and Field House job. Refused.

14. No damages can be recovered in this case on account of the Cowley-Goettman Playground Swimming Pool job. Refused.

15. No damages can be recovered in this case on account of the Burgwin Playground Swimming Pool job. Refused.

16. No damages can be recovered in this case on account of the Schenley Park Comfort Station job. Refused.

17. No damages can be recovered in this case on account of the McKinley Park Field House job. Refused.

18. No damages can be recovered in this case on account of the Sophia Evert Playground No. 1, Contract No. 14, Field House job. Refused.

19. No damages can be recovered in this case on account of the Townsend Playground Field House job. Refused.

20. No damages can be recovered in this case on account of the Larimer Playground Field House job. Refused.

21. No damages can be recovered in this case on account of the West Penn Playground Recreational Building job. Refused.

22. No damages can be recovered in this case on account of the Armstrong Playground Field House job. Refused.

23. No damages can be recovered in this case on account of the Sophia Evert Playground, Contract No. 29, Field House job. Refused.

24. No damages can be recovered in this case on account of the Garfield Playground Field House job. Refused.

25. No damages can be recovered in this case on account of the Schenley, Riverview and Leslie Swimming Pool Filter Houses job. Refused.

26. No damages can be recovered in this case on account of the Homewood, Phillips, Murray, Sheridan and Olympia Swimming Pool Filter Houses job. Refused.

27. If the jury should find in favor of the plaintiff, from any damages which may be found due on account of the Concord Elementary School Project, there should be deducted the sum of \$1,500, withheld by the Government on account of the electrical contract on that project. Affirmed.

28. If the jury should find in favor of the plaintiff, from any damages which may be found due on account of the Schiller Elementary School project, there should be deducted the sum of \$2,000, withheld by the Government on account of the electrical contract on that project. Affirmed.

29. If the jury should find in favor of the plaintiff, from any damages which may be found due on account of the South Vocational High School project, there should be deducted the sum of \$4,913.01, withheld by the Government on account of the electrical contract on that project. Affirmed.

30. If the jury should find in favor of the plaintiff, from any damages which may be found due on account of the Arsenal Elementary School project, there should be deducted the sum of \$2,500, withheld by the Government on account of the electrical contract on that project. Affirmed.

31. If the jury should find in favor of the plaintiff, from any damages which may be found due on account of the Braddock Junior High School project, there

should be deducted the sum of \$2,446.61, withheld by the Government on account of the electrical contract on that project. Affirmed.

32. In the case of the South Vocational High School project, if the jury should find for the plaintiff, the jury should deduct from the contract price the sum of \$12,087.83, the amount withheld by the School Board of the City of Pittsburgh from the electrical contractor, before figuring any damages. Refused.

33. In the case of the South Vocational High School project, if the jury should find for the plaintiff, the actual damages cannot exceed \$105.94. Refused.

34. In the case of the West View High School project, if the jury should find for the plaintiff, the jury should deduct from the contract price the sum of \$5,936.33, the amount withheld by the School District of the Borough of West View from the electrical contractor, before figuring any damages. Refused.

35. In the case of the West View High School project, if the jury should find for the plaintiff, the actual damages cannot exceed \$2,024.78. Refused.

36. If the jury finds that any one or more of the defendants did not participate in any unlawful act, the jury should find in favor of such defendant or defendants, even though the verdict be against other defendants. Refused.

Verdict.

Now March 22, 1941, we the Jurors empaneled in the case above entitled, find a verdict in favor of Plaintiff and against all the defendants except Robert C. Carmack, in the sum of \$315,100.91, being \$203,100.91 damages and \$112,000 penalty, and as to defendant Robert C. Carmack, we find a verdict in his favor.

WALTER S. COLMERY,
Foreman.

Motion for Judgment on Reserved Points.

Now, to wit, March 31, 1941, come each and all of the defendants in the above-entitled case other than Robert C. Carmack, by their attorneys, and jointly and severally move the court that all the evidence taken upon the trial of the above-entitled case be certified and filed so as to become part of the record, that the verdict and judgment heretofore entered in this case be set aside, and that judgment be entered in favor of each of said defendants, respectively, in accordance with the joint, several and separate motions for a directed verdict which were presented by said defendants at the trial and are now of record in this Court.

WILLIAM H. ECKERT,

EUGENE B. STRASSBURGER,

J. VINCENT BURKE, JR.,

*Attorneys for defendants other
than Robert C. Carmack.*

ORDER OF COURT.

Now, to wit, March 31, 1941, the foregoing motion having been presented in open court, upon consideration thereof it is ordered and directed that the motion be filed and that all of the evidence taken upon the trial be duly certified and filed so as to become part of the record in this case, and a rule is hereby granted upon the plaintiffs to show cause why the verdict and judgment heretofore entered in this case should not be set aside and judgment entered in favor of each and all of the defendants other than Robert C. Carmack, in accordance with the joint, several and separate motions for a directed verdict which were presented by said defendants and are now of record in this Court, all proceedings in the meantime to be stayed.

Motion for Judgment on Reserved Point.

Now, to wit, March 31, 1941, comes the defendant, C. W. Ridinger, Sr., by his attorneys, and moves the court that all the evidence taken upon the trial of the above-entitled case be certified and filed so as to become part of the record, that the verdict and judgment heretofore entered against him in this case be set aside, and that judgment be entered in favor of said defendant in accordance with his motion for a directed verdict presented by him at the trial and now of record in this Court.

WILLIAM H. ECKERT,
SMITH, BUCHANAN & INGERSOLL,
*Attorneys for defendant C. W.
Ridinger, Sr.*

ORDER OF COURT.

Now, to wit, March 31, 1941, the foregoing motion having been presented in open court, upon consideration thereof it is ordered and directed that the motion be filed and that all the evidence taken upon the trial be duly certified and filed so as to become part of the record in this case, and a rule is hereby granted upon the plaintiffs to show cause why the verdict and judgment heretofore entered in this case should not be set aside and judgment entered in favor of the defendant, C. W. Ridinger, Sr., in accordance with his motion for a directed verdict presented by him at the trial and now of record in this Court, all proceedings in the meantime to be stayed.

PER CURIAM

S.

(A similar motion and order were made for each other defendant, except Carmack.)

Motion for New Trial.

Filed April 1, 1941.

Now, to wit, March 31, 1941, come the defendants in the above-entitled case, jointly and severally, by their attorneys, and move the court to grant each and all of them a new trial for the following reasons, reserving the right to file additional reasons if necessary:

1. The verdict is inconsistent and capricious, because it excludes the defendant Carmack from liability, who by his own testimony was the active manager of the alleged bid-rigging. If he is not liable then no other defendant can be liable.

2. The learned trial judge erred in excluding evidence of the cost of performing the contracts on which damages were claimed.

3. The learned trial judge erred in excluding the testimony of Special Assistant to the Attorney General, M. Neil Andrews.

4. The learned trial judge erred in excluding the records of the criminal proceedings at No. 10462 Criminal to No. 10498 Criminal, both inclusive, in the District Court of the United States for the Western District of Pennsylvania.

5. The learned trial judge erred in refusing the defendant's first point for charge.

6. The learned trial judge erred in refusing the defendants' second point for charge.

7. The learned trial judge erred in refusing the defendants' third point for charge.

8. The learned trial judge erred in refusing the defendants' fourth point for charge.

9. The learned trial judge erred in refusing the defendants' point for charge numbered 4½.

10. The learned trial judge erred in the qualifica-

tion or comments which he added to the defendants' fifth point for charge.

11. The learned trial judge erred in refusing the defendants' seventh point for charge.

12. The learned trial judge erred in refusing the defendants' eighth point for charge.

13. The learned trial judge erred in refusing the defendant's ninth point for charge.

14. The learned trial judge erred in refusing the defendants' tenth point for charge.

15. The learned trial judge erred in refusing the defendants' eleventh point for charge.

16. The learned trial judge erred in refusing the defendants' twelfth point for charge.

17. The learned trial judge erred in refusing the defendants' thirteenth point for charge.

18. The learned trial judge erred in refusing the defendants' fourteenth point for charge.

19. The learned trial judge erred in refusing the defendants' fifteenth point for charge.

20. The learned trial judge erred in refusing the defendants' sixteenth point for charge.

21. The learned trial judge erred in refusing the defendants' seventeenth point for charge.

22. The learned trial judge erred in refusing the defendants' eighteenth point for charge.

23. The learned trial judge erred in refusing the defendants' nineteenth point for charge.

24. The learned trial judge erred in refusing the defendants' twentieth point for charge.

25. The learned trial judge erred in refusing the defendants' twenty-first point for charge.

26. The learned trial judge erred in refusing the defendants' twenty-second point for charge.

27. The learned trial judge erred in refusing the defendants' twenty-third point for charge.

28. The learned trial judge erred in refusing the defendants' twenty-fourth point for charge.

29. The learned trial judge erred in refusing the defendants' twenty-fifth point for charge.

30. The learned trial judge erred in refusing the defendants' twenty-sixth point for charge.

31. The learned trial judge erred in refusing the defendants' thirty-second point for charge.

32. The learned trial judge erred in refusing the defendants' thirty-third point for charge.

33. The learned trial judge erred in refusing the defendants' thirty-fourth point for charge.

34. The learned trial judge erred in refusing the defendants' thirty-fifth point for charge.

35. The learned trial judge erred in refusing the defendants' thirty-sixth point for charge.

36. The learned trial judge erred in excluding the evidence offered to show that the defendant Edwin C. Carter was in the military forces of the United States at all times material to this case.

37. The learned trial judge erred in admitting in evidence the statement of claim in the suit brought by Thomas J. Lesterick.

38. The learned trial judge erred in admitting in evidence the estimates made by the witness Proctor.

39. The learned trial judge erred in refusing to withdraw a juror and continue the case because of the improper and prejudicial arguments made by the plaintiff's counsel in his closing address to the jury regarding the action taken in the criminal proceedings against the defendants.

40. The learned trial judge erred in denying the defendants' motion to strike out because based upon hearsay the testimony of the witness Proctor regarding the Arsenal School, the Cowley-Goettman Playground, the Schiller School, the South Vocational High School,

the Braddock Junior High School, the Woodville Home and the Municipal Airport.

41. The learned trial judge erred in the following portion of his charge to the jury (R. 5496):

"Now, the first question, I would say, for you to consider is whether or not the defendants, or any of them, were involved in the conspiracy to defraud the United States in the matter of electrical contracts awarded on certain PWA projects in the Western District of Pennsylvania to which the United States appropriated and contributed Federal funds to the extent of forty-five per cent or thirty per cent of the actual cost of the electrical work."

42. The learned trial judge erred in the following portion of his charge (R. 5500):

"Now, the plaintiffs in this case have the burden of showing by the fair weight of the testimony that the defendants were engaged in a conspiracy to defraud the United States, * * *"

43. The learned trial judge erred in including the County Home job at Woodville as one which the jury might find had been handled in accordance with the improper method of bidding charged in the complaint.

44. The learned trial judge erred in charging the jury that a \$2,000 penalty or forfeiture should be included by them in their verdict for each project which they found had been collusively bid.

45. The learned trial judge erred in the following portion of his charge (R. 5509-5510):

"And in connection with the Government's portion of furnishing the money to complete these projects, we say to you that it is of no importance that the money paid out to the electrical contractors on the projects involved in this case was paid through the agency of the Municipal Corporation,

School District, County, or other agency of the State of Pennsylvania. In our view, the money to be expended as the share of the United States on these projects was ear-marked as Federal funds. All these projects carried on with money derived from the Federal Government had to be approved by the Federal Administrator. The diversion of these funds to the project to which they were assigned was a diversion of Government money."

46. The learned trial judge erred in the following portion of his charge (R. 5502):

"However, we say to you that, even without corroborating evidence, if you believe the testimony of Carmack, that would be sufficient evidence upon which to base a verdict for the plaintiffs in this case."

47. The charge was inadequate, prejudiced and unfair in that the learned trial judge specifically called the attention of the jury to evidence corroborating Carmack, but ignored the defendants' evidence which contradicted Carmack.

48. The learned trial judge erred in refusing to permit the character witnesses to testify.

49. The learned trial judge erred in commenting upon or drawing attention to the fact that the defendants had not testified in their own behalf.

50. The learned trial judge erred in reforming the verdict of the jury.

51. The verdict is excessive.

52. The learned trial judge erred in admitting the evidence as to the manner in which the County Home at Woodville contract was obtained by Hess & Barton, Inc.

53. The learned trial judge erred in refusing to permit defendants' counsel make the witness Proctor show in detail in court how he arrived at his estimate of

the cost of the labor required to do the North Fayette School project.

54. The learned trial judge erred in refusing to permit defendants' counsel make the witness Proctor show or measure on the plans in court where the 2610 feet of 1/0 wire that the witness said would suffice to do the Arsenal School job would go.

WILLIAM H. ECKERT,
EUGENE B. STRASSBURGER,
J. VINCENT BURKE, JR.,
Attorneys for Defendants.

JOHN B. NICKLAS, JR.
Of Counsel.

**Opinion on Defendants' Motion for Judgment Non
Obstante Verdicto or for a New Trial.**

Filed August 12, 1941.

SCHOONMAKER, Judge:

This is an informer's action based on Section 5438 and Sections 3490 to 3494 inclusive, of Revised Statutes, in relation to false claims against the United States. The case, on trial from December 2, 1940, to March 22, 1941, resulted in a verdict in favor of plaintiff and against all the defendants—except the defendant Carmack—in the sum of \$315,100.91. All the defendants, except Carmack, have moved for judgment in their favor, non obstante verdicto, or, in lieu thereof, for a new trial.

The suit charges the Electrical Contractors Association of Pittsburgh, Inc., its officers, general manager, and members, with a conspiracy to defraud the United States, a department or officer thereof, in the matter of electrical works on PWA projects, by obtaining or aiding to obtain the payment or allowance of false or fraudulent claims for such electrical work against the United

States. That is made an offense by Section 5438 R. S. Section 3490 R. S. provides that any person who shall do or commit any of the acts prohibited by the provisions of Section 5438, shall forfeit and pay to the United States the sum of \$2000.00; and in addition, double the amount of damages which the United States may have sustained by reason of doing or committing such acts, together with the costs of suit. This section further provides that such forfeiture and damages shall be sued for in the same suit.

Section 3491 of Revised Statutes gives jurisdiction to United States District Courts to hear and determine such suits; and provides that they may be brought and carried on by any person, as well for himself as for the United States.

An informer's action under Sections 3490-3494 of the Revised Statutes must rest on violations of Section 5438 as that section read at the time of the enactment of Section 3490. That seems to be conceded by both parties to this suit; and it has been so ruled by this court, and others. See *Olson v. Mellon*, 4 F. Supp. 947, (affirmed 71 F. (2d) 1021; *United States ex rel. Kessler v. Mercur Corporation*, 13 F. Supp. 742, (affirmed 83 F. (2d) 178; *United States ex rel. v. Salant & Salant, Inc.*, Decision by District Judge Patterson, July 1, 1938, (not reported).

Section 5438 of the Revised Statutes, as it stood when it was incorporated in Section 3490 R. S., reads as follows:

"Every person who makes or causes to be made, or presents, or causes to be presented, for payment or approval, to or by any person or officer in the civil, military or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious or fraudulent, or who, for the purpose of obtaining, or aiding

to obtain, the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any False or fraudulent claim, or who, having charge, possession, custody or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States, or wilfully to conceal such money or other property, delivers, or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used, or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not

less than One Thousand nor more than Five Thousand Dollars."

The plaintiff contends the facts of this case bring it within the purview of these statutes. The defendants contend it does not.

The complaint charges, and the evidence in this case establishes, that the United States, in pursuance of the Emergency-Relief-and-Construction Acts of Congress, made certain grants of Federal funds to be expended in public-work projects undertaken by local municipalities and school districts in Allegheny County, Pennsylvania, under the supervision of the Federal Public Works Administrator, who is an official of the United States Government. See 40 U.S.C.A. Section 401(a). An application was made in each case to the Federal Government for a grant of Federal money to be used in the construction of these projects. Plans and specifications for each project were prepared by the local municipality or school district, submitted to the Public Works Administrator of the Federal Government for approval, and were approved by him. Bids were asked for, and received, for doing the electrical work thereon. Such bids were submitted to the Administrator for approval, and were approved by him. The money the Government agreed to contribute to these projects was paid out in the course of the carrying-out of these projects only on sworn estimates submitted by the contractor to the Administrator, and approved by him on Federal Form (I 23). The Federal funds allotted to each project were placed in a bank approved by the Administrator, which bank account contained also the funds of the local authority. This special fund was from time to time checked by a representative of the Administrator; and no payments could be made therefrom to the contractor doing the work, except with the approval of the Administrator, which approval was noted on Form I 23 above mentioned.

There was a conspiracy among the defendants, whereby they would agree among themselves as to which defendant was to submit the low bid for a particular project, and which of the other defendants would submit other and higher bids for the same project, thereby intending to control, and actually controlling the low bid to be submitted, and preventing any competitors bidding on any of the projects involved in this suit; thus compelling the Government to contribute and pay for doing the electrical work on the projects more than the Government would have been required to pay, had there been open and free competition in the open market for doing the electrical work.

In this connection it will be noted that the defendant-contractors, in submitting their bids which were approved by the PWA Administrator, submitted signed statements substantially as follows:

"The undersigned hereby certifies that this Proposal is genuine and not sham or collusive, or made in the interest or in behalf of any person, firm or corporation not herein named, and that the undersigned has not, directly or indirectly, induced or solicited any other bidder to submit a sham bid, or any other person, firm or corporation to refrain from bidding, and that the undersigned has not in any manner sought by collusion to secure for himself an advantage over any other bidder."

And further it will be noted that payments were made out of the joint construction account in banks approved by the Administrator and containing funds furnished by the United States and the local municipality or district on Forms I 23, of estimates furnished by contractor-defendants and approved by the Administrator. Therefore, in each transaction there was not an absolute gift of money to the local municipality or district, but a grant of money by the Government for payment to the contractor for a portion of the work, which was

disbursed only on vouchers submitted by the contractor to the Administrator, and approved by him.

In our opinion, the facts of the case bring it squarely within the provisions of Section 5438 Revised Statutes, which is applicable to "Every person who makes or causes to be made, or presents, or causes to be presented, for payment or approval to or by any person in the civil, military or naval service of the United States, any claim upon or against the Government of the United States, or any department, or officer thereof, * * *" It requires no strained or forced construction of this Act to bring the facts of this case within the purview of Section 5438 Revised Statutes. A fair construction of this statute makes it apply to the facts of this case, because the claim on which the Government money was paid to defendant contractors, was made directly to an officer of the Government; and, upon the allowance of this claim, the Government contribution to the PWA project was paid to them, out of the special construction account, in accordance with the terms and conditions under which these grants were made, i. e. PWA Form 230. This form provides in Part II, Paragraph 6, on page 5:

"6. Disbursement of moneys in Construct-Account.—Moneys in the Construction Account will be expended only for such purposes as shall have been previously specified in a signed certificate of purposes filed with and accepted by the Government.
* * *

It is our view that the Federal funds in these special construction accounts continued to be Federal funds until paid out to the contractors. This view finds support in *Madden vs. United States*, 80 F. (2nd) 672, in which there was a grant of Federal funds by the Federal Emergency Relief Administration to the Emergency Finance Board, a Massachusetts State Agency, which transferred part of its funds to the City of Boston for payment of Boston Public Library employees. In that

case, Judge Morris, delivering the opinion of the Circuit Court of Appeals, said on page 676:

"* * * Any diversion of such funds from the project to which they were assigned was a diversion of government money. As hereinbefore stated, all funds allotted by the federal government for the relief of unemployment even though disbursed by state agencies were earmarked as federal funds, and if diverted from the use for which they were granted, it constituted a fraud upon the government. *Langer v. United States* (C.C.A.) 76 F. (2nd) 817. See, also, *United States v. Walter*, 263 U. S. 15, 44 S. Ct. 10, 68 L. Ed. 137; *United States v. Clallam County* (D.C.) 283 F. 645."

In the case of *Langer v. United States*, 76 F. (2nd) 817, cited above, one of the questions involved was whether money loaned or granted to a state by the Reconstruction Finance Corporation, or by the Federal Emergency Relief Administration, ceased to be Federal funds. The contention was made in that case that the fund could be used in any manner the state saw fit. But the Circuit Court of Appeals held otherwise, saying on page 824:

"On the strength of these authorities, appellants contend that the money could be used in any manner they saw fit. In our view, the authorities do not sustain this contention. Congress can inquire into the manner of the execution of this duty by the state. An arrangement in the nature of a conspiracy to defeat the application of the funds to their statutory purpose is within the rule of *Haas v. Henkel*, supra, and, as before observed, pecuniary loss is not essential. * * *

Other Federal authorities support the view that the False Claims Statutes apply to frauds, even though there be an independent agency through which the money was handled.

In the case of *United States v. Carlin*, 259 Fed. 904, (District Court, E. D. Pennsylvania), the court said, on page 907:

"The funds deposited by the United States Shipping Board Emergency Fleet Corporation, under the construction contract for the payment, inter alia, of workmen's wages, were the funds of the United States which had been appropriated by Congress and authorized to be expended by the President through the agency determined by him. Through the authority delegated by him to the United States Shipping Board Emergency Fleet Corporation, under which it employed the American International Corporation as its agent, and under which the latter corporation employed the American International Shipbuilding Corporation as its agent, so much of the funds deposited as were used for payment of wages of workmen employed under the construction contract were a part of the funds of the United States and were expended by the corporation carrying out the contract only as agent for the United States.

"Under the circumstances, a fraud, the effect of which was to fictitiously increase the total amount of the pay roll and therefore the contract actual cost of the shipyard at Hog Island or the vessels being constructed there, would by so much diminish the funds of the United States. * * *

In *Belvin v. United States*, 260 Fed. 455, the United States had a contract with Porter Brothers for the construction of buildings and other government work. The contract provided that the United States was to pay the full costs of the work done, and that Porter Brothers were to be paid a certain percentage of such costs. Porter Brothers employed Belvin as a fireman and Hoffman as a timekeeper. The rate of pay for the position of

fireman was less than that for engineers. Belvin and Hoffman agreed that Belvin should be falsely and fraudulently carried on the pay rolls of the Porter Brothers as an engineer, which was done in accordance with the agreement. The defendants were indicted and convicted for conspiracy to defraud the United States. One of the arguments of counsel for the defendants was that the indictment set out a conspiracy to defraud the Porter Brothers, and not the United States. The court held that there was sufficient evidence to warrant the finding of a conspiracy to defraud the United States, Judge Pritchard saying, on page 457:

"Any amounts paid out by Porter Bros. in excess of its 'net expenditures in the performance of said work,' in the absence of any knowledge on the part of the government, would have necessarily resulted in a loss to that extent to the United States. * * *

"The defendants sought by this conspiracy to do that which would necessarily result in defrauding the government. Porter Bros. could not in any view of the case lose a cent by virtue of this transaction. Their pay rolls were only used as a means by which the defendants could make a false charge, the burden of which would fall, not upon Porter Bros., but upon the government."

In *United States v. Harding*, 81 F. (2nd) 563, the Texas irrigation district was incorporated for the purpose of constructing an irrigation project. The work was begun, but was discontinued for lack of funds, and the district applied to the United States, through the Public Works Administrator, for a loan and grant with which to complete the project, submitting plans and specifications which received the approval of the Administrator. The defendants then entered into a plan to secure a change in the method of completing the project by the substitution of a pipe system requiring the use

of redwood material for an open canal system, and so to close the bidding for the contract for the construction of the project to all bidders except bidders on redwood. Some of the conspirators were to obtain control of the redwood lumber market so that no one else would be in a position to bid successfully on the project. The conspirators were to secure to themselves the exclusive right to bid for the work on the project, and thus to secure the making of the award to them; and were arbitrarily and corruptly to fix a bid for the project at a price which would allow the defendants a profit of 30% of the actual cost of its performance. One of the defendants, a representative of the administrator, was to use his influence by way of recommendations to his superior on the approval of the grant and loan to the district for the construction of the project under the plans and specifications substituted by the conspirators, as a result of which the conspirators would be awarded the contract; the provisions for competitive bidding would be rendered of no effect; and the government grant of money would be increased. The defendants were indicted for conspiracy to defraud the United States. The district court sustained the defendants' demurrers to the indictment. The Circuit Court of Appeals, in reversing the district court, said on pages 566 and 568:

"* * * In this manner the conspirators were to defeat and nullify the provisions of the Act of Congress with relation to grants and loans for irrigation projects and to cause the project to cost a very much larger sum—and thus to cause the United States to pay out sums of money under its agreement for the loan and for the grant which it would not otherwise have paid out. * * *"

"* * * The ultimate object was the securing of the money of the United States. * * *

"This is particularly true here for reasons we have already stated; namely, that the conspiracy

charged had, as its ultimate object, the obtaining by the conspirators of funds of the United States which they could not receive and which the United States would not pay out except for the unlawful acts of its own employee in confederation with the other defendants. If the plan had been successful, and if the government had paid out moneys—as a grant or gratuity—in excess of those which it would have paid except for the dishonesty of its employee in confederation with the other defendants, it would hardly be contended the payment was lawful; and this would be equally true whether the President had the right to create the Public Works Administration or whether the appropriation by Congress of moneys to the particular purpose was or was not constitutional.”

Then, in *United States v. Kapp*, 302 U. S. 214, the defendants were indicted for conspiracy to defraud the United States by furnishing false information and making false statements to the Secretary of Agriculture in order to secure benefit payments under the Agricultural Adjustment Act. The defendants sold hogs to the Government at premium prices through misrepresentation as to the identity of the producers of the hogs sold and the continued ownership by such producers, when in fact the hogs belonged to one or more of the defendants. The defendants demurred upon the ground that the provisions of the statute and the regulations of the Secretary of Agriculture were void, and that the acts alleged in the indictment did not constitute an offense against the laws of the United States. The court, in reversing the lower court, and remanding it for further proceedings, said, on page 217:

“Such a construction is inadmissible. It might as well be said that one could embezzle moneys in the United States Treasury with impunity if it turns

out that they were collected in the course of invalid transactions. See *Madden v. United States*, 80 F. (2d) 672, 674. Appellees were not indicted for a conspiracy to violate the Agricultural Adjustment Act but for a conspiracy to violate the statute protecting the United States against frauds. It is cheating the Government at which the statute aims and Congress was entitled to protect the Government against those who would swindle it regardless of questions of constitutional authority as to the operations that the Government is conducting. Such questions cannot be raised by those who make false claims against the Government. See *Langer v. United States*, 76 F. (2d) 817, 824, 825; *Madden v. United States*, supra; *United States v. Harding*, 65 App. D. C. 161; 81 F. (2d) 563, 568; *United States v. MacDonald*, 10 F. Supp. 948."

In *United States v. Mellon, et al*, 96 F. (2d) 462, it was held that false statements in an application for a loan insured under the National Housing Act were within the statute making it an offense to make false statements in any matter within the jurisdiction of any department of the United States, notwithstanding the application was made only to a bank and notwithstanding the bank might not have complied strictly with the rules of the Federal Housing Administrator regarding the insurance of loans. To the same effect, see *Kay v. United States*, 303 U. S. 1, 58 S. Ct. 468.

The defendants have quoted certain cases in support of their views that the funds involved in the instant suit were not Federal funds within the meaning of Section 5438, Revised Statutes. But we are of the opinion that they do not support the defendants' position.

For instance, in the unreported case of *United States on the relation of Meyer Salzman v. Salant & Salant, Inc.*, in the District Court of the United States

in the Southern District of New York. In Law 69-214, Judge Patterson held that the False Claims Statute did not cover the funds that were given to the Red Cross. Judge Patterson said:

"The Red Cross is not a part of the government, nor is it a department or officer of the government. It is an incorporated association created by Act of Congress for the purposes mentioned in the act. In no sense are its funds the property of the government. In acting under the Joint Resolution of February 8, 1933, the Red Cross did not become part of the government or a department or officer of the government. Under the terms of the Joint Resolution, it merely received a donation from the Government and administered it for the purpose specified."

In this case it may be noted also that the Government retained no control over the disbursement of the fund given to the Red Cross, where in the case at bar the grant to the Public Works Administration was controlled all the way through by the PWA Administrator.

Again, in the case of United States on the relation of Robert A. Gilchrist, etc. v. American Cotton Cooperative Association, et al, in the United States District Court for the Southern District of New York, L 58-272, cited by the defendants, Judge Knox held that the plaintiff was not entitled to maintain suit, quoting an opinion by Judge Gibson in the case of Olson v. Mellon, 4 Fed. Supp. 947, in which Judge Gibson held that the False Claim Statute did not cover a false and fraudulent tax return. We cannot see that this has any bearing on the facts of the instant case.

Defendants further contend that they cannot be subject to penalties and double damages in the instant case, because they have already been punished for the same offense by fines in criminal proceedings in this court at No. 10462 Criminal. The indictment in the

criminal case charged the defendants in the instant case with a conspiracy under Section 37 of the Criminal Code (18 U.S.C.A. 88); it reads as follows:

"* * * throughout a period of time beginning or or about the first day of January, in the year of our Lord one thousand nine hundred and thirty-five and continuing each and every day thereafter until the return of this Indictment into this court, at Pittsburgh, in the County of Allegheny, in the Western District of Pennsylvania, and within the jurisdiction of this court, did knowingly, willfully, unlawfully, and feloniously conspire, combine, confederate, agree and have a tacit understanding together and with each other and with diverse other persons unknown to your Grand Jurors to defraud the United States, that is to say;

"9. That, while keeping up an appearance of competition and conveying to awarding authorities the idea and belief that said Defendant Electrical Contractors were rival bidders, the Defendants agreed that they would abate honest rivalry, avoid and prevent competition, deceive the awarding authorities, prevent transmission to awarding authorities of bids, and, in effect, secure in advance the awarding of contracts to one of the Defendant Electrical Contractors selected by them; and so defeat the plain intent and purposes of said Acts and Resolutions and defraud the United States, all to the mutual profit of the Defendants, the injury and damage of the United States, the selfish destruction of the public interest and the impairment of governmental functions and the discredit of public officials."

To this indictment the defendants in the instant case pleaded "Nolo Contendere," and were fined by this court.

It will be noted that this indictment made no reference to the presentation of a false claim against the Government for payment or approval, such as would be required in charging an offense under Section 5438 Revised Statutes. We cannot find that the offense charged in the indictment is the same as charged in the complaint in this instant case; therefore, there is no double jeopardy here.

In addition, the case at bar is not a criminal action. It is a civil action under the provisions of Section 3490, Revised Statutes, to recover civil sanctions for the acts committed in violation of Section 5438, Revised Statutes, which is not barred by the criminal proceedings against defendants. See *Helvering v. Mitchell*, 303 U. S. 391. In this case, Mr. Justice Brandeis said, pages 399-400:

"Congress may impose both a criminal and a civil sanction in respect to the same act or omission; for the double jeopardy clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense. The question for decision is thus whether Section 293 (b) imposes a criminal sanction. That question is one of statutory construction. Compare *Murphy v. United States*, 272 U. S. 630, 632.

"Remedial sanctions may be of varying types. One which is characteristically free of the punitive criminal element is revocation of a privilege voluntarily granted. Forfeiture of goods or their value and the payment of fixed or variable sums of money are other sanctions which have been recognized as enforceable by civil proceedings since the original revenue law of 1789, Act of July 31, 1789; c. 5, Sec. 36, 1 Stat. 29, 47. In spite of their comparative severity, such sanctions have been upheld against the contention that they are essentially criminal and subject to the procedural rules governing criminal prosecutions. *Passavant v. United States*, 148

U. S. 214; *United States v. Zucker*, 161 U. S. 475; *Hepner v. United States*, 213 U. S. 103; *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320; *Chicago, B. & Q. Ry. Co. v. U. S.*, 220 U. S. 559; 578; *United States v. Regan*, 232 U. S. 37; *Grant Bros. Construction Co. v. United States*, 232 U. S. 647, 660; *Murphy v. United States*, 272 U. S. 630; *Various Items v. United States*, 282 U. S. 577; *Lloyd Sabaudo Societa v. Elting*, 287 U. S. 329, 334."

We therefore conclude that the plea of double jeopardy is of no avail to the defendants.

Defendants further contend that this suit will not lie, because it has not been authorized by the Commissioner of Internal Revenue and the Attorney General, as provided for by Section 3214, Revised Statutes, which reads as follows:

"Sec. 3214. No suit for the recovery of taxes, or of any fine, penalty, or forfeiture shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: Provided, That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit."

In our opinion, that statute does not apply to the instant case. It relates to taxes, fines, and penalties relating to taxes. This suit is directly authorized by 3491 R. S., which provides, *inter alia*: "Suit may be brought and carried on by any person as well for himself as for the United States; * * *." We therefore conclude that this objection to the instant suit was not well taken.

As to defendants' contention that Marcus is not an informer within the Act, because he furnished no information to the Government as to the facts upon which

this suit is based before filing his suit, in our opinion that is not a necessary prerequisite to a suit under Section 3491 R. S., which expressly authorized "any person" to bring and carry on suit, with no requirement of previous notice to the United States. We therefore conclude this objection is without merit.

Defendants contend that there has been a misjoinder of parties-defendants, in that all the parties-defendants are charged to have participated in a joint conspiracy; and that there has been no sufficient proof to bind some of them. If that were so, the effect would be not to defeat the entire action, but would prevent recovery only against the defendants as to whom there was insufficient evidence.

The general rule is that in a civil action for conspiracy to defraud, the liability of the individual defendants, as well as the existence of the conspiracy, is for the jury. A verdict may be against those whom the evidence shows are guilty, and in favor of those who are innocent. See *Barry v. Legler*, 39 Fed. (2nd) 297, 303.

Counsel for defendants, C. W. Ridinger, Sr., President of Iron City Engineering Company, and Warren I. Bickford, its Secretary and Treasurer; and counsel for Robert Yates, Vice-President of MacNeil Electric Company: contend there is not sufficient evidence in this case to permit a recovery against the defendants individually.

The rule to be applied to corporate officers in reference to their personal liability for wrongful acts of a corporation, is stated in *14A Corpus Juris*, 175, 176, as follows:

"A director, officer, or agent of a corporation is liable in damages for injuries suffered by third persons because of his torts, regardless of whether he acted on his own account or on behalf of the corporation and regardless of whether or not the corporation is also liable. He cannot escape liability on the ground that in committing the tort he acted

as a director, officer, or agent of the corporation, or on the ground that the corporation may also be liable. As in any case, it is of course necessary that the facts show the commission of a tort before the officer may be held liable therefor. An officer or director of a corporation is not liable for its torts where he has not participated therein, or had any knowledge of, or given any consent to, the act or transaction.. Conversely, he is liable where he has participated or where he has had knowledge from first to last of the wrongful acts of the corporation. Likewise a director or officer is not, merely by virtue of his position, liable in all cases for the torts of other directors, officers, or agents; he is liable when, and only when, he participated in the tortious act, authorized or directed it, or acquiesced in it when he either knew, or by the exercise of reasonable care should have known of it, and should have objected and taken steps to prevent it."

It is a general rule of conspiracy that each conspirator is responsible for the acts of his associates committed in furtherance of the common design. And each is responsible for everything done by his confederates which follows incidentally in the execution of the common design as one of its probable and natural consequences, even though it was not intended as a part of the original design.

The question presented is whether there is sufficient evidence to tie these particular defendants in the illegal bidding plan.

The responsibility of the particular defendants must be judged by the principles above stated, as applied to the evidence in this case with respect to the particular conspiracy here charged.

Taking the case of C. W. Ridinger, Sr., President, and Warren I. Bickford, Secretary and Treasurer of the Iron City Engineering Company, corporate defendant,

there appears to be no contest over the fact that the corporation and C. W. Ridinger, Jr., its manager, participated in the collusive bidding of the Electrical Contractors Association. The question is,—Was there sufficient evidence to show that Ridinger, Sr., and Bickford knew of, and participated therein to such an extent as to sustain a verdict against them individually?

Carmack, Secretary of the Electrical Contractors Association, testified as to the working of the collusive-bidding plan of the Association, and its members. He said that in most cases Ridinger, Jr., represented the Iron City Engineering Company in carrying out the bidding plan of the Association. He could not recall that the Senior Ridinger was ever present at a meeting of the Association. Carmack further testified that he had never discussed the bidding plan of the Association with the Senior Ridinger. (Carmack's Test. pgs. 1152-1155). In this connection, there appears in Carmack's statement to the PWA Investigators (P. 58) which was read to the jury, the following:

"Q. Is the Iron City Engineering Company in that bracket?

"A. They are in that bracket, but they don't ever seem to be with us—they don't even seem to be in that bracket. Don't know whether they attend the meetings or not."

(See also Rec. pg. 2166)

It also appears by the evidence that the Senior Ridinger in person signed the bid of the Iron City Engineering Company on the municipal-airport project and the Northside Market project, which bids were submitted on the collusive-bidding plan of the Electrical Contractors Association. At the trial Ridinger, Sr., produced the estimate sheets of his Company on these two projects. (Ex. 302, 303, Rec. pg. 827).

On the witness stand, Ridinger, Sr., when called upon to produce these papers, claimed his constitutional right against giving evidence against himself; but did produce the documents Exhibits 302 and 303, then saying: (Rec. pg. 828) "I might say that I have not been active in this business for about twenty years, and I am not very familiar with these figures. I just had to take what was in the file."

In addition to that, it appears that Ridinger, Sr., signed, in behalf of the Iron City Engineering Company, checks for dues to the Electrical Contractors Association figured on the basis of volume of work done on the Association plan, as reported by the Company. There was introduced such a report of the Iron City Engineering Company signed by Ridinger, Jr., (Ex. 344A) dated January 28, 1938, which showed a volume of business at \$18,466.15, and dues payable, \$184.66, (Rec. 1131, 1132).

Is the evidence sufficient to sustain a verdict against Ridinger, Sr.? I am of the opinion that it is. The fact that under the Association's plan he signed bids on two projects, and checks for Association dues, certainly shows knowledge on his part of the dealings of his Company with the Association. It certainly could be properly inferred that he must have known, and approved, the dealings of his Company with the Association when he signed bids for these two projects and checks for Association dues. Counsel for defendant contends that Ridinger, Sr., signed the bids for these two projects at the request of his son, the manager of the Company. The evidence does not show that this is so. But, even if he did so sign at the request of his son, the inference might properly be made that his son advised him fully as to the relationship of the Iron City Engineering Company with the Electrical Contractors Association and its bidding plan; that Ridinger, Sr., approved of it and his Company's participation therein.

It is contended, too, that Ridinger, Sr., was only the nominal head of the Iron City Engineering Company, devoting his entire time to the affairs of the Iron City Electric Company (now called the Westinghouse Electric Supply Company).

The testimony of Haines, an employee of this Company, (Rec. pgs. 5343-5344) shows that Ridinger, Sr., and Bickford managed its business. But there is no evidence which shows that Ridinger, Sr., was only the nominal head of the Iron City Engineering Company. In fact, there is no evidence to show how much of his time he devoted to either Company. Ridinger, Sr., might have taken the witness stand and disclosed his entire relationship with the two companies. He did not choose to do so. It would seem, therefore, that the evidence in the case would sustain the verdict of the jury.

As to defendant Bickford, he was secretary and treasurer of the Iron City Engineering Company. Carmack testified that Bickford was present at a hotel meeting of the Association, (Rec. 1152). Carmack also testified that the electric-supply houses agreed to cooperate with the Association in its plans, and that he talked with Bickford, representing the Iron City Electric Company, about the cooperation of that Company (Rec. p. 2144). It may also be noted that Bickford, as secretary of the Iron City Engineering Company, signed the indemnity bond accompanying the bid of that company on the municipal-airport project. It would seem that Bickford's connection with the bidding conspiracy was for the jury, for they might properly infer therefrom that he personally knew of the plan, and participated in it, as far as his company was concerned.

Taking now the case of Robert B. Yates, vice-president of the MacNeil Electric Company. His counsel contend that there was not sufficient evidence to involve him personally with the conspiracy.

Carmack testified that at the meetings Alvin S. MacNeil only represented the corporation, and that he could not recall that Yates ever came in on the bidding plan. (Rec. 1158) However, the record shows that he signed proposals and contracts on projects involved in the plan. Yates himself took the witness stand and denied any personal knowledge or participation in the bidding plan of the Electrical Contractors Association. (Rec. pages 2760, 2767, 2774, 2775).

As Yates signed proposals and contracts on projects awarded his company under the plan, it is our view that the testimony presented an issue to the jury of his participation in the conspiracy.

Counsel for the corporate defendants contend that corporations are not within the sanctions of Sec. 3490 Revised Statutes. This section applies to "Any person not in the military or naval forces." There is one case that supports this contention, i. e., *United States v. Kansas Pacific Railway Co.*, 26 Fed. Cases, No. 15,506. That case involved fraudulent claims against the United States, under Section 3490. Judge Foster held that the restrictions of the statute make it applicable to individuals only, and not to corporations. His reasoning is not sound that the statute refers only to persons capable of being employed in the land or naval forces, or in the militia; and that, as a corporation cannot be employed in such forces, it is not within the provisions of the statute. It seems to me the word "person", as used in this statute, includes corporations, because they are just as much within the mischief aimed at by the statute, as individuals. In fact, Congress has made it plain that the word "person" when used in the Revised Statutes, may be applied to corporations. Title 1, Chapter 1, Sec. 1, of the Revised Statutes, provides: "In determining the meaning of any Act of Congress, * * * the word 'person' may extend and be applied to partnerships and corporations, * * *"

Our view in this respect is supported by *United States v. Union Supply Co.*, 215 U. S. 50; *Interstate Lumber Co. v. United States*, 101 F. (2nd) 477.

The final ground urged by defendants why judgment should be entered in their favor, is that there is not sufficient evidence on which to assess, or by which to measure, any damages. Section 3490, Revised Statutes, provides a penalty of \$2000, "and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing of such act."

We charged the jury as to the measure of damages, as follows:

"The damage to which the plaintiffs would be entitled would be measured by the difference between the contract price paid the contractor therefor in excess of the amount which the United States would have been obliged to pay for the same work, had there been open, competitive and uncontrolled bidding."

And again, in another part of the charge, we said:

"Now, in computing the actual damage that was suffered on a particular project or particular instance, you would take the contract price for each of the PWA projects as to which testimony was introduced in this case, and then determine what you find to be a fair and reasonable low bid for doing the electrical work on that particular project, had there been fair and open competitive bidding. If that fair and reasonable low bid is lower in amount than the price for which the contract was awarded, the difference between the contract price and the fair and reasonable low bid would be the measure of actual damage suffered by the United States as to that particular project. Then the sum total of the actual damages would make up the total actual damages suffered by the United States. This

amount you would then double to arrive at the damages which would have accrued to the United States by reason of the conspiracy to present false claims against the United States."

We are of the opinion that we correctly stated the measure of damages to be applied by the jury.

The gist of this action is fraud and deceit. The Supreme Court, in *McMullen v. Hoffman*, 174 U. S. 639, 653, dealing with a collusive-bidding case involving a public work, characterized the nature of the case as follows:

"But in this case there is more even than concealment. There is the active fraud in the putting in of these, in substance, fictitious bids, in their different names, but in truth forming no competitive bids, and put in for the purpose already stated. It is not too much to say that the most perfect good faith is called for on the part of bidders at these public lettings, so far as concerns their position relating to the bids put in by them or in their interest. The making of fictitious bids under the circumstances detailed herein is in its essence an illegal and most improper act; indeed, it is a plain fraud perpetrated in the effort to obtain the desired result."

The damage to be recovered, therefore, would be the money which the Government contributed to each project in excess of what it would have paid, had there been fair and open competition.

This rule was found by the Court of Appeals of New York in *People v. Stephens*, 71 N. Y. 527, 559, to be applicable where there was fraudulent bidding.

However, the defendants say, that even applying the measure of damage given by the court to the jury, the plaintiffs have proved no facts by which the actual damage suffered by the Government could be determined

with reasonable accuracy. It is the contention of the defendants that, as the grant of the Government placed an absolute limit on the Government's share of the cost of the work,—either 30% or 45%—of the original estimated cost of the project, it cannot be determined what loss, if any, the Government suffered by the fraudulent bidding, without first showing the total cost of the entire project; for, if that cost exceeded the original estimate, The Government would have paid only the agreed percentage of the original estimate, and may not then have suffered any loss by the fraudulent bidding plan of the Electrical Contractors Association.

We cannot follow this argument. Whatever the cost of the entire project may have been, the Government would be damaged so far as the electrical contracts are concerned, to the extent that it contributed to them in excess of what it would have been required to contribute, had there been open and fair competition. We see no merit in this contention of the defendants.

The motion of defendants for judgment non obstante veredicto will therefore be denied.

We will now take up and consider the defendants' motion for a new trial.

Their first proposition is that the defendants should have a new trial, because the verdict is inconsistent in exonerating the defendant Carmack, who, by his own testimony, is a confessed party to the conspiracy charged in the complaint.

The verdict, as tendered by the jury, reads as follows:

"And now, to wit March 22 1941, we, the Jurors empaneled in the above-entitled case, find the defendants guilty as charged in the indictment and award damages in the sum of Two hundred three Thousand one thousand dollars and ninety one cents (203,100.91) plus the penalty of One hundred twelve thousand dollars Total \$315100 91/100 —

The jury absolves Mr Robt C Carmack from damages in this suit

WALTER S. COLMERY—*Foreman*"

On reading this form, the court found it to be in the form of a verdict in a criminal case, and suggested an amendment as to form to comply with the forms of verdict customary in civil cases. This form was then read to the jury; signed by the foreman; and upon a poll of the jury then taken, each juror stated that the verdict was his verdict.

This verdict reads as follows:

"Now, March 22, 1941, we the Jurors empaneled in the case above entitled, find a verdict in favor of plaintiff and against all the defendants except Robert C. Carmak, in the sum of \$315,100.91, being \$203,100.91 damages and \$112,000 penalty, and as to defendant Robert C. Carmak, we find a verdict in his favor.

WALTER S. COLMERY,
Foreman."

This verdict the defendants say was inconsistent and cannot stand. We cannot see that the defendants against whom a verdict was rendered were injured by returning a verdict in favor of Carmack.

This is not a case where the defendants are liable jointly, if liable at all. It is a case where their liability is both joint and several. We cannot, therefore, see that the defendants against whom a verdict was rendered, are harmed by the verdict in this case. The plaintiffs could, of course, complain that the jury should have returned a verdict against Carmack; but his co-defendants could not.

Counsel for defendants themselves recognized that in their thirty-sixth point for charge, which reads as follows:

"36. If the jury finds that any one or more of the defendants did not participate in any unlawful act, the jury should find in favor of such defendant or defendants, even though the verdict be against other defendants."

We did not affirm this point as drawn, but did say to the jury in our general charge as follows:

"If you find that a conspiracy exists as charged, then you will have to determine which of the defendants were parties to that conspiracy. If you find that none of the defendants were involved in the conspiracy charged in this case, then you would return a verdict in favor of the defendants. If, on the other hand, you find that a conspiracy, as charged, exists in this case, you would return a verdict in favor of the plaintiffs and against the defendants involved therein for such amounts of damage and penalty as you would find from the evidence in this case that the plaintiffs would be entitled to, computed according to the measure of damage which I shall now give you."

The instruction we gave the jury is supported by the authorities. In 15 C. J. S., page 1028, the rule is stated as follows:

"Each conspirator is jointly and severally liable for all damage resulting from the conspiracy."

And again, in 15 C. J. S., Sec. 31 c, it is said, page 1052:

"Against one or more defendants. As a general rule, as the gravamen of the action is the damage and not the conspiracy, as stated supra Sec. 21, a verdict or judgment may be rendered against any one or more of defendants, and in favor of the others, as the rule as laid down in Corpus Juris, which has been quoted and cited with approval, is that if plaintiff fails in the proof of a conspiracy

or concerted design, he may still recover damages against one or more defendants shown to be guilty of the tort without such agreement, and is not entitled to a verdict against defendants whom he does not prove participated in the wrong."

We, therefore, conclude that, in view of the fact that Carmack was a mere employee of the Electrical Contractors Association, a verdict in his favor would not bar a recovery against the other defendants who employed him to carry out the unlawful acts to the damage of plaintiff.

This view is supported by *Strickfaden et al. v. Green Creek Highway District et al.*, 248 Pac. 456, 464; *Whitesell v. Joplin & P. Ry. Co. et al.*, 115 Kan. 53, 222 Pac. 133.

It is our view that the verdict, as first submitted by the jury, was defective and irregular in form; that all the court did was to mold the form of the verdict so as to award damages to the plaintiffs against all of the defendants (except Carmack), which was the evident finding of the jury, as stated in the verdict the jury first proposed.

It has been repeatedly held that the trial court has the power to mold the form of a verdict which has been returned in a defective form. See 64 C. J. 1094; *Thompson v. Emerald Oil Co.*, 279 Pa. 321; *Shively v. McDonnell et al.*, 308 Pa. 298; *Commonwealth v. John Mills et al.*, 3 Pa. Super. Ct. 161; *Smullin, Appellant v. Harenski*, 106 Pa. Super. Ct. 453.

We therefore conclude that no error was committed in molding the form of the verdict.

The next reason assigned by the defendants in their motion for a new trial, is that the court erred in rejecting the defendants' offer to prove the actual cost to them of doing the work called for by the contracts on the PWA projects involved in this suit. We cannot see that the actual cost to the contractor of doing the work for

which a contract was awarded to him can have any evidential bearing as to the amount of damages the plaintiffs would be entitled to recover. The question in this case is whether or not the Government paid more for its share of doing this work than it would have had to pay, had there been no fraudulent and collusive bids. If it did, then the Government would suffer damage to the extent that the bid put in on the collusive-bidding plan exceeded what would have been a fair and reasonable bid for the contract work in the open market, had there been no collusive-bidding plan. The plaintiffs offered evidence to show what would have been fair bids for doing the electrical work on the PWA projects involved in this case. The defendants offered evidence tending to show that the bids actually submitted were fair and reasonable. This presented an issue of fact for the jury, which found that the Government had been damaged, and the extent of such damage. The evidence fully sustains the verdict of the jury. The actual cost to defendants of doing the work can have no bearing on that issue. The cases cited by defendants on evidence as to cost of doing this work do not bear on the issues of this case; the facts are entirely different.

Defendants also contend this evidence should be admitted for the purpose of mitigating damages. We cannot conceive how defendants, as wrongdoers, would be entitled to the actual cost to them of doing the work, in order to mitigate the damages.

The next two reasons for a new trial refer to the exclusion of the testimony of Special Assistant to the Attorney General, M. Neil Andrews, and the records in the criminal cases against defendants. This matter has hereinbefore been discussed on defendants' motion for judgment *n. o. v.*; and we need add nothing to what we there said. They present no grounds for a new trial.

The next reason urged is that there can be but one penalty of \$2000 under the provisions of Sec. 3490, R. S.

This section, as far as concerns this penalty, reads as follows:

"Any person * * * who shall do or commit any of the acts prohibited by any of the provisions of Section 5438, Title 'Crimes', shall forfeit and pay to the United States the sum of \$2,000, * * *"

As we construe this statute, this penalty would be applicable to the false claims made on each project; and therefore, the plaintiffs could recover \$2000 for each such project. Counsel for plaintiffs contended each false affidavit or certificate that was submitted to the PWA administrator, created a liability for the \$2000.

There is support for that view in 15 C. J. S. Sec. 21, page 1031 and 1032, where it is said:

"The gist or gravamen of the action is not the conspiracy itself, but is the civil wrong, which is done under the conspiracy, and which results in damage to the plaintiff, but it is not necessary that any particular conspirator should have profited thereby. Each tortious act resulting in damages creates an independent, separate cause of action against the conspirators. * * *"

The defendants contend that as there was but one conspiracy charged, there could be but one penalty of \$2000.

We could not agree with either party on this issue, for the reason that it is our view that in each project there was a single, false, or fraudulent claim made arising from the collusive-bidding plan. On a review of the case, we are of the opinion that our ruling at the trial was correct.

The next proposition advanced by defendants is that each defendant is liable only for damages on the projects on which he bid. There is no merit in this contention. This is a conspiracy case, where the rule applies that each conspirator is liable for all the acts of his co-conspirators done in pursuance of the conspiracy.

The next point urged by defendants is that the court erred in not applying the rule as to burden of proof applicable to criminal cases. Counsel cite *United States v. Shapleigh*, 54 Fed. 126 (C. C. A. 8). We cannot follow that case. This is a civil action to recover a penalty and damage. The rules governing criminal prosecutions do not apply. *Helvering v. Mitchell*, 303 U. S. 391, 402.

Defendants also raise the question of double jeopardy in their motion for a new trial. We have already covered this matter in our opinion on defendants' motion for judgment *n. o. v.*

The next point made by the defendants is that the court should have affirmed, without qualification, their fifth point, which point and the answer of the court thereto read as follows:

"Defendants' Point No. 5:

'No inference against the defendants may be drawn from the fact that they refused to testify, because in so doing they were merely exercising a right which the United States Constitution gives them.' "

"That point is affirmed. But we say to you, in connection with that, it would have a bearing upon whether or not there was any evidence that would refute the testimony of Carmack, for instance, when no witnesses have taken the stand to deny this testimony; that would be a fact for your consideration.

Upon objection by counsel for both plaintiffs and defendants to this answer to Point 5, we then said to the jury:

"Members of the jury, I have heard counsel with reference to their exceptions to my charge, and I have decided to affirm without qualification the defendants' fifth point, which reads as follows:

" 'No inference against the defendants may be drawn from the fact that they refused to testify, because in so doing they are merely exercising a

right which the United States Constitution gives them.' "

Objection is made that this does not cure the alleged error of the court in not unqualifiedly affirming the fifth point. We cannot see that this is so, for a judge may certainly correct errors in his charge. In 64 C. J. 734, it is said:

"* * * A judge can modify or correct instructions at his own motion, and recall the jury for such purpose, or to amplify his charge, or to give additional instructions on material issues not covered by the original charge; and he may revoke an instruction when he becomes convinced of an error in a previous ruling. Such modification or correction may also be made on motion of counsel. It is not error for the court, on request, to give a charge explanatory of oral or written charges, and such a charge may be given to correct previous instructions, or to remedy a misleading charge, or to explain the application of a principle law stated in a previous instruction. * * *"

And again, on page 1007 of the same volume, it is said:

"* * * An error in a charge is, as a general rule, cured where the court subsequently withdraws or corrects it, even though the jury are not told that the first instruction was incorrect. * * *"

We therefore conclude there was no error as to our instructions to the jury on Point 5.

The next reason advanced for a new trial is that the court should have affirmed defendants' 7th point, which reads as follows:

"7. If the maximum limit of the Federal Government's agreed contribution on any project would have been reached without the alleged excessive amount of the electrical contract, there can be no

recovery of any damages on account of such projects in this case."

We have already discussed this matter in consideration of defendants' motion for judgment *n. o. v.* For the reasons there stated, we are of the opinion that there was no error in the refusal of that point; and that the defendants are not therefore entitled to a new trial by reason of the refusal of that point.

We next consider the refusal of the defendants' 8th point, which reads as follows:

"8. There can be no recovery of any damages because of any payments made upon periodic estimates for partial and final payment, known as I-23 forms, which were submitted by contractors after February 5, 1940."

We see no error in the refusal of this point. Certainly the United States is not to be estopped in matters affecting the powers of government. The PWA administration is a governmental function for the relief of the destitute and the creation and increase of employment; hence, estoppel in this will not apply to the United States.

In 19 Am. Jur. Estoppel, page 822, it is said:

"The United States is not subject to an estoppel which impedes the exercise of the powers of government. It is not estoppel to deny the validity of a transaction or agreement which the law does not sanction, nor does an estoppel arise through an act or representation made by an officer or agent without authority to act for the government in the premises."

The cases cited by defendants do not apply to governmental functions.

The next reason urged by defendants for a new trial is that the court erred in refusal of defendants' 9th point, which reads as follows:

"9. There can be no recovery of any penalty or forfeiture on account of any project in which no actual damages have been shown."

Section 3490 R. S. expressly provides for a penalty of \$2000, "and in addition, double the amount of damages which the United States may have sustained." This makes it plain that regardless of damages sustained, the United States would still be entitled to recover the penalty. This point refers to instances where the United States withheld payments on account of the discovery of the fraud, so that no actual damage was shown. However, that would not preclude the United States from recovery of the penalty prescribed by Section 3490 R. S.

The cases cited by defendants are not in point, for none of them involved an action by the United States to recover penalties under Sec. 3490 R. S. We conclude that our refusal of this point was correct.

The next assignment of error relates to our refusal of defendants' 10th point, which reads as follows:

"10. Where the United States Government has since February 5, 1940, paid any sponsor an amount in excess of the amount of the percentage of alleged damages to which the Government would be entitled, there can be no recovery on that particular project."

This point is similar to point 8 which we have heretofore discussed: We need add nothing to that discussion. There is no merit in this point.

The defendants' reasons for a new trial—numbers 15 to 34 inclusive—refer to the refusal of defendants' points for charge—11 to 26 and 32 to 35 inclusive—asking binding instructions from the court with reference to damages on the several projects enumerated in those points. The issue of fact as to whether any damage was suffered by the United States on these several projects involved in this case was for the jury, as we believe we

have heretofore demonstrated in this opinion. The defendants, in their briefs on motion for a new trial, do not discuss these projects separately, except as to the Woodville County Home project. Their contention in regard to that project is that it was not covered by either of the bidding plans alleged in the complaint.

With this contention we cannot agree. There was ample evidence that there was concerted action to prevent competitive bidding on this project. Collusive bids were submitted by members of the Electrical Contractors Association, to-wit: Hess & Barton, Inc.; Fort Pitt Electric Company; Lord Electric Company, Raphael Electric Company; Franklin Electric & Construction Company; Morganstern Electric Company, Inc. The Hale Electric Company, Iron City Engineering Company, Craig Electric Company, and Sargent Engineering Company took out plans on this job, but did not bid. Other contractors were bribed into not bidding on this project. From the evidence the jury could find that this project fell within the first bidding plan in operation around the years 1935 and 1936, in which members in the higher bidding brackets agreed as to who would get the job. The fact that Hess, of Hess & Barton, Inc., may have bribed other contractors not to bid, would not take this particular project out of the conspiracy.

The rule to be applied is stated in *11 Am. Jur.* p. 549, as follows:

"The rule of responsibility for the acts of co-conspirators includes acts done before the defendant joined the conspiracy, as well as the acts subsequent to his participation. Whether or not the act done was in furtherance of the common design or whether it was a natural and probable consequence flowing from the execution of the common design is always a question for the jury."

And again on page 580 of the same volume, it is said:

"The connection between the parties having been established, whatever was done in pursuance of the conspiracy by one of the conspirators is considered as the act of all the conspirators; all are equally liable therefor as joint tort-feasors, regardless of whether they were original parties to the conspiracy and irrespective of either the fact that they did not actively participate therein or the extent to which they benefited thereby. * * * Every person entering into a conspiracy already formed is deemed in law a party to all acts committed by any of the other parties either before or after his entrance, in furtherance of the common design."

The next reason urged is that the court erred in not affirming the defendants' 36th point for charge, which reads as follows:

"36. If the jury finds that any one or more of the defendants did not participate in any unlawful act, the jury should find in favor of such defendant or defendants, even though the verdict be against other defendants."

We did, however, cover the matter in our general charge as follows:

"If you find that a conspiracy exists as charged, then you will have to determine which of the defendants were parties to that conspiracy. If you find that none of the defendants were involved in the conspiracy charged in this case, then you would return a verdict in favor of the defendants. If, on the other hand, you find that a conspiracy, as charged, exists in this case, you would return a verdict in favor of the plaintiffs and against the defendants involved therein for such amounts of damage and penalty as you would find from the evidence in this case that the plaintiffs would be entitled to,

computed according to the measure of damage which I shall now give you."

That fully covers the matter referred to in this point, and we are not required to use the exact language suggested by a point. There is no merit in this suggested reason for a new trial.

The next matter raised by defendants is that defendant Carter, because he held a commission as a reserve officer in the military service of the United States, cannot be held liable for a violation of Section 3490 R. S. We cannot agree with this contention. This section applies to "Any person not in the military or naval force of the United States, or in the militia, called into or actually employed in the service of the United States, * * *". As a reserve officer, Colonel Carter maintained his civilian status, and would not be a person in the military force of the United States, unless and until called into active duty. There was no evidence he was on active duty at the time of the commission of the acts complained of in this case. We therefore hold that he was within the terms of this statute.

The defendants next complain that the court erred in admitting in evidence the statement of claim in a suit filed in the Court of Common Pleas of Allegheny County, Pennsylvania, against defendants. This statement was offered for the purpose of showing certain admissions made by some of the defendants upon being served with a copy of the statement of claim in that suit, and for the purpose of showing that the suit was discussed in conference with some of the defendants. We are of the opinion that for the purpose it was offered, this statement was admissible. It must be noted that a conspiracy was charged in this case, and that considerable latitude is permitted. See *15 C. J. S. Conspiracy*, pp. 1043, 1044, where it is stated:

"* * * The fact of the conspiracy may, of

course, be shown by direct evidence, and should be so proved if this character of evidence is available; but since direct evidence is ordinarily in the possession and control of the alleged conspirators and seldom can be obtained, a conspiracy usually is susceptible of no other proof than that of circumstantial evidence, and therefore it is a well-settled rule that proof by direct and positive evidence is not necessary, and that circumstantial evidence, that is, evidence of the acts of the alleged conspirators and of the circumstances surrounding the transaction which is the basis of the charge, is admissible to prove the conspiracy charged, * * *

"The law permits great latitude in the admission of circumstantial evidence tending to establish a conspiracy, and to connect those advising, encouraging, aiding, abetting, and ratifying the overt acts committed for the purpose of carrying into effect the objects of the conspiracy, as the jury should have before them and are entitled to consider every fact which has a bearing on and a tendency to prove the ultimate fact in issue and which will enable them to come to a satisfactory conclusion. * * *

"The limits to which evidence of this kind may be admitted rest in the sound discretion of the trial court, and its ruling will be sustained if the testimony which is admitted tends even remotely to establish the ultimate fact."

The next charge is that the court erred in admitting in evidence the estimates of the witness Proctor. These were the estimates that Proctor made as to what would have been fair and reasonable bids for the electrical work for each of the projects. These Proctor estimates were identified as his compilation of what would have been a fair low bid for doing the work on these projects. He testified orally as to this compilation, but the papers

themselves were not examined by the jury, with the exception of one estimate which was shown to the jury by counsel for defendants. At the conclusion of the charge there was a discussion as to whether these estimates should go to the jury. We ruled they should not. (See Rec. pp. 5528-5532).

The next reason urged by defendants is that the court erred in not withdrawing a juror and continuing the case, because of remarks of counsel with reference to the plea of *nolo contendere* entered by defendants in the criminal proceedings, and offering no defense therein.

However, counsel for defendants in their opening to the jury mentioned the fact that the defendants pleaded *nolo contendere* to the criminal charges. Likewise, counsel for defense, in final argument to the jury, urged that no admission of liability was to be implied from the fact that defendants had pleaded *nolo contendere* in the criminal proceedings.

In disposing of the motion to withdraw a juror and continue the case, we said to the jury: (Rec. p. 5488):

"The Court: We decline the motion to withdraw a juror. Counsel may proceed with his argument. The fact that there was a plea of *nolo contendere* having been mentioned by counsel for the defendants in the course of their argument, counsel I think may discuss that subject. Possibly he went a little further than he should have gone in the discussion of it, because, as I look at it, there is no inference of liability in this case to be drawn from the mere fact that they entered a plea of *nolo contendere* in the case that was brought against them in the criminal court. This case has to be decided by the jury upon the evidence that is offered before them in this case. My own view is that the matter ought not to have been adverted to by counsel on either side in the course of their arguments."

This I believe was a proper disposition of this motion.

The next reason urged by defendants for a new trial, is that the court erred in refusing to strike out testimony of Proctor as to what would have been a fair low bid for certain of the projects involved in this suit, because it was based on hearsay. There is no merit in this proposition. Proctor testified to his own estimate, as to what would have been a fair low competitive bid for these projects. The fact that Proctor employed Lesterick to assist him in securing price-lists of materials, would not make his testimony hearsay. Proctor certainly could employ a man to assist in preparing his compilation of prices quoted by manufacturers on materials required to do this electrical work. The final result, as given in court, was Proctor's own estimate as to what would have been a fair low bid. The weight to be given that testimony was, of course, for the jury.

Assignments of error, Nos. 41 to 47 inclusive, relate to exceptions taken by defendants to portions of our charge to the jury. Counsel, in their brief, submit no specific argument as to them. As they relate largely to matters that we have elsewhere discussed in this opinion, we do not deem it necessary to discuss again the legal questions involved therein, and merely hold they are without merit.

The next assignment of error relates to defendants' offer to prove their reputations for honesty, fair dealing, and integrity. As we have already held this to be a civil action to recover a civil sanction, this evidence is not competent.

As to assignments of error: No. 49, relating to the comment of the court as to defendants not testifying; No. 50, relating to reformation of the verdict; No. 51, relating to the amount of the verdict; and No. 52, relating to the admission of evidence regarding the County Home at Woodville,—these matters have all been dis-

cussed elsewhere in this opinion. These assignments of error are without merit.

In assignments of error Nos. 53 and 54, defendants raise the question of whether counsel for defendants were improperly limited in their cross-examination of plaintiffs' witness Proctor, the expert called to testify concerning what would have been a fair low bid in the open market for the projects involved in this case. The record will show that counsel for defense devoted a great deal of time to the cross-examination of this witness, covering thoroughly every phase of this witness's testimony in chief. Surely, the time of the court and jury should not be taken up in having this witness refigure these projects in open court.

When this subject was up at the trial, the court then said: (Rec. 3298, 3299)

"The Court: It is just a question, gentlemen, whether we will take the time to have this witness make this refiguration on the witness stand or whether he may come in with his breakdown and be cross examined about it later. It does not seem to me advisable to spend court time by having him figure here on the witness stand these items which he says he cannot give now, he will have to take some time to refigure it."

"Mr. Eckert: Will Your Honor note us an exception to that ruling?"

We cannot see that the defendants could be harmed by this ruling. If that course had been followed, the defendants then would have had full opportunity to cross-examine the witness Proctor on the figures submitted. This trial lasted from December 2, 1940, to March 22, 1941. It certainly was asking too much for the court and jury to sit idly by while this witness made his computations over again.

The question came up again at the trial. (Rec. pp. 3578-3580), when the witness was asked to recompute

from the plans of one of the projects the amount of wire required. The witness said it would take about sixteen hours to make the necessary measurements on the plans: (Rec. p. 3578). Certainly the court and jury should not be required to sit and watch the witness do this figuring on the witness stand. We cannot see anything in our ruling on these two matters that is inconsistent with substantial justice to both parties. Therefore, even if there be error in our action as to these two matters, no harm has been done. (See Rule 61 of the Rules of Civil Procedure).

On the whole case, therefore, we conclude that the motions for judgment n. o. v., or in lieu thereof, for a new trial, are without merit, and should be denied.

Orders may be submitted accordingly.

**Order of Court Denying Motion for New Trial and
Refusing Judgment on Reserved Point.**

Now, to-wit, this 13th day of August, 1941, in accordance with the Opinion of the Court filed August 12, 1941 the Motion of the defendants

William F. Hess, John R. Williams, Thomas G. Hodgdon, Thomas G. Hodgdon, Jr., C. W. Ridinger, Jr., C. W. Ridinger, Sr., Warren I. Bickford, Edwin C. Carter, James V. Burke, G. L. Craig, William S. Taczanowsky, Ralph M. Morganstern, Max Daniels, Alvin S. MacNeil, Walter C. Gloeckler, Robert B. Yates, H. L. Fullerton, K. K. Wood, Louis H. Berkman, Edward B. Sargent, individually and doing business as Sargent Engineering Company, Charles M. Cronenweth, individually and doing business as Cronenweth Electric Company, William C. Hemmerle, individually and doing business as W. C. Hemmerle Electric Company, James C. Devlin, individually and do-

ing business as Devlin Electric Construction Company, Norman B. Leeke, individually and doing business as Diamond Electric Company, Herbert D. Hale, individually and doing business as H. D. Hale Electric Company, James A. Rodden, individually and doing business as Rodden Electric Company, Richard W. Schindler, individually and doing business as R. W. Schindler Electric Company, Donald R. Ross, individually and doing business as D. R. Ross Electric Company, James H. Stauffer, individually and doing business as Stauffer Electric Company, John W. Craig, individually and doing business as J. W. Craig Electric Company, R. G. Diodati, individually and doing business as R. G. Diodati and Brother, Irwin J. Levinson, individually and doing business as Levinson Electric Company, Bernard A. Ross, individually and doing business as Ross Electric Company, John E. Hale, individually and doing business as Hale Electric Company, Walter F. Weber and J. R. Walter, individually and as partners, doing business as Fort Pitt Electric Company, Winfield S. Martin and Michael J. Murray, individually and as partners doing business as Martin & Murray, Benjamin Raphael and Israel Raphael, individually and as partners doing business as Raphael Electric Company, Hess and Barton, Franklin Electric & Construction Company, Iron City Engineering Company, Carter Electric Company, Craig Electric Company, G. L. Craig Electric Company, Morganstern Electric Company, Inc., Daniels Electric Construction Company, MacNeil Electric Company, Star Electric & Construction Company, Industrial Electric Company, Electrical Contractors Association of Pittsburgh, Inc.; Lord

Electric Company: Robert N. Morris, individually and doing business as Morris Engineering Company

jointly and severally, heretofore filed on March 31, 1941, for a new trial in the above entitled case, is hereby denied as to all of said named defendants: and in accordance with said opinion the motions of said defendants heretofore filed severally on March 31, 1941, for judgment on reserved point and to set aside the verdict and judgment heretofore entered against them in this case and for judgment in their favor are hereby denied as to each of said defendants.

It is further ordered in accordance with stipulation of counsel this day made in open court, that for the purpose of giving defendants time to perfect appeals in this case and give supersedeas bonds on each appeal that no execution be issued on the judgment herein until September 17, 1941.

PER CURIAM

F. P. SCHOONMAKER,

Judge.

Final Judgment.

March 22, 1941—Pursuant to above verdict, judgment is hereby entered, in favor of Plaintiff and against all Defendants, except Robert C. Carmack in sum of \$315,100.91.

G. H. BERGER, *Clerk.*

August 13, 1941. Order of Court filed and entered in accordance with above opinion denying motion for new trial and refusing judgment on reserved point.

Notice of Appeal.

Filed September 19, 1941.

To G. H. Berger, Clerk

Defendants William F. Hess, John R. Williams, Thomas G. Hodgdon, Thomas G. Hodgdon, Jr., C. W. Ridinger, Jr., C. W. Ridinger, Sr., Warren I. Bickford, Edwin C. Carter, James V. Burke, G. L. Craig, William S. Tacianowsky, Ralph M. Morganstern, Max Daniels, Alvin S. MacNeil, Walter C. Gloeckler, Robert S. Yates, H. L. Fullerton, K. K. Wood, Louis H. Berkman, Edward S. Sargent, individually and doing business as Sargent Engineering Company, Charles R. Cronenweth, individually and doing business as Cronenweth Electric Company, William C. Hemmerle, individually and doing business as W. C. Hemmerle Electric Company, James C. Devlin, individually and doing business as Devlin Electric Construction Company, Norman B. Leeke, individually and doing business as Diamond Electric Company, Herbert D. Hale, individually and doing business as H. D. Hale Electric Company, James A. Rodden, individually and doing business as Rodden Electric Company, Richard W. Schindler, individually and doing business as R. W. Schindler Electric Company, Donald R. Ross, individually and doing business as D. R. Ross Electric Company, James H. Stauffer, individually and doing business as Stauffer Electric Company, John W. Craig, individually and doing business as J. W. Craig Electric Company, R. G. Diodati, individually and doing business as R. G. Diodati and Brother, Irwin J. Levinson, individually and doing business as Levinson Electric Company, Bernard A. Ross, individually and doing business as Ross Electric Company, John E. Hale, individually and doing business as Hale Electric Company, Walter F. Weberg and J. R. Walter, individually and as partners, doing business as Fort Pitt Electric Company,

Winfield S. Martin and Michael J. Murray, individually and as partners doing business as Martin & Murray, Benjamin Raphael and Israel Raphael, individually and as partners doing business as Raphael Electric Company, Hess and Barton, Franklin Electric & Construction Company, Iron City Engineering Company, Carter Electric Company, Craig Electric Company, G. L. Craig Electric Company, Morganstern Electric Company, Inc., Daniels Electric Construction Company, MacNeil Electric Company, Star Electric & Construction Company, Industrial Electric Company, Electrical Contractors Association of Pittsburgh, Inc., Lord Electric Company, Robert N. Morris, individually and doing business as Morris Engineering Company, hereby file this their notice of appeal to the United States Circuit Court of Appeals for the Third Circuit from the judgment entered in favor of the plaintiffs and against these defendants in the within case in the sum of Three Hundred Fifteen Thousand, One Hundred and 91/100 (\$315,100.91) Dollars, and from the refusal by the Trial Court of their motions for judgment non obstante veredicto and for a new trial.

EUGENE B. STRASSBURGER,
STRASSBURGER & MCKENNA,
WILLIAM H. ECKERT,
SMITH, BUCHANAN & INGERSOLL,
VINCENT BURKE,
CAMPBELL, WICK, HOUCK & THOMAS,
JOHN B. NICKLAS, JR.,
MCCRADY, NICKLAS & HIRSCHFELD,
Attorneys for Appellants.

Designation of Record on Appeal.

Filed November 8, 1941.

The appellants hereby designate the following portions of the record, proceedings and evidence in the above-entitled case to be contained in the record on appeal:

1. Relevant docket entries.
2. The following pleadings:
 - a. Complaint.
 - b. Answer of C. W. Ridinger, Sr. and Jr., Warren I. Bickford and Iron City Engineering Company.
 - c. Amendment to answer of all defendants.
 - d. Plaintiffs' reply to the second defense of defendants' amended answer.
 - e. Second amendment to answer of all defendants.
 - f. Plaintiffs' reply to the second amendment to answer of all defendants.

3. The following portions of the transcript of the trial proceedings:

<u>Pages of Trial Transcript</u>	<u>Name of Witness or Other Description</u>
8-13	John F. Laboon
24-68	" " "
79-81	A. H. Doering
91-98	" " "
111-188	M. M. Steen
188-206	Joseph J. Mitchell
206-209	M. M. Steen
209-232	A. H. Doering
232-253	Harry Hively
254-265	M. M. Steen
265-272	Harry Hively

<u>Pages of Trial Transcript</u>	<u>Name of Witness or Other Description</u>
273-286 $\frac{1}{2}$	Louis C. Groshardt
300-310	Alphonse R. Ferrucci
310-327	Paul Hughes
327-346	Walter R. Dripps
346-363	Walter D. Ferree
364-370	Alphonse R. Ferrucci
370-399	William C. Evans
402-418	" " "
418-425	Walter D. Ferree
425-426	Paul Hughes
427-447	Walter R. Dripps
448-464	John C. Deal
465-494	William A. England
503-527	Lena Z. Kenney
528-545	Henry Wadkowski
546-549	Lena Z. Kenney
549-554	Jules Gonze
554-558	E. J. Waldman
559-560	Lena Z. Kenney
560-569	E. J. Waldman
569-578	Charles E. Haag
579-592	John J. Bruce
594-620	Thomas Hartland
621-634	Howard H. McCloskey
634-636	Walter R. Dripps
637-641	E. J. Waldman
641-651	Jules Gonze
652	John J. Bruce
653-673	Harry G. Canning
673-689	John F. Laboon
692-714	William T. Norton
725-734	Thomas Hartland
735-741	Alvin S. MacNeil
749-759	Harry C. Barton

Designation of Record on Appeal.

<u>Pages of Trial Transcript</u>	<u>Name of Witness or Other Description</u>
759-763	Max Daniels
764-774	G. L. Craig
775-776	Walter R. Dripps
776-777	William C. Evans
804-808	Richard M. Morganstern
810-817	Edwin C. Carter
825-829	Charles W. Ridinger, Sr.
829-831	Max Daniels
1146-1155	Robert C. Carmack
1450-1463	Lena Z. Kenney
1486-1487	Walter R. Dripps
1488-1489½	H. G. Canning
1544-1545	Paul Hughes
1546-1549	Thomas Hartland
1549-1559	Ralph J. Davis
1564-1567	" " "
1578-1579	William A. England
1596-1599	Henry Wadkowski (By stipulation)
1674-1686	John F. Laboon
1687-1693	Joseph J. Mitchell
1694-1696	Herbert Patterson
1697-1704	William C. Evans
1732-1740	" " "
1795-1796	T. C. Jones (By stipulation)
1796-1801	Joseph J. Mitchell
2164-2167	Robert C. Carmack
2401-2405	Thomas G. Hodgdon, Sr.
2415-2417	Offer of statements by counsel in criminal proceedings
2457-2460	Morris L. Wolf
2465-2483	Earl D. Covell
2622-2623	Martin T. Moran

<u>Pages of Trial Transcript</u>	<u>Name of Witness or Other Description</u>
4784-4786	Mrs. Mary Snyder (Offer)
4930-4932	Offer and exclusion of actual costs
5014-5017	Offer and exclusion of Carter's commissions
5222-5225	John G. Bowman (Offer and exclusion of charac- ter evidence
5326-5328	M. Neil Andrews (Offer)
5337-5344	Joseph C. Haines
5364-5365 and the records offered	Offer and exclusion of rec- ords in criminal cases
5486-5489	Objection to portion of closing argument of plaintiff's counsel to jury
5490-5526	Charge

4. The following exhibits:

No.	Description
22	Form 230 and first offer of grant to City of Pitts- burgh
26	Tabulation of grants on Pittsburgh schools
28	Arsenal Elementary School Contract
29	Banksville Elementary School Contract
30	Burgwin Elementary School Contract
31	Carmalt Elementary School Contract
32	Concord Elementary School Contract
33	Crescent Elementary School Contract
34	Girls Vocational School Contract
35	Miller Elementary School Contract
36	Perry Athletic Field House Contract
37	Prospect Jr. High School Contract
38	Schiller Elementary School Contract

No.	Description
39	South Vocational High School Contract
40	Spring Garden Elementary School Contract
41	Spring Hill Elementary School Contract
43	Washington Trade School Contract
44	West Liberty School Contract
45	Whittier Elementary School Contract
68	Offer and acceptance on Arsenal School
69	Offer and acceptance on Concord School
70	Offer and acceptance on Crescent School
72	Offer and acceptance on Miller School
76	Amended offer and acceptance on Spring Garden School
107	City of Pittsburgh's payment records on West Penn Playground
116	School Building, Chalfant, Contract
119	Seibert School, Ross Twp., Contract
129	Blaw Knox Municipal Bldg. Contract
135	Westinghouse Memorial High School Contract
137	(First one) Form I 23 to City
144	Form 96 on Braddock School
150	Letter from PWA to Braddock School District re withholding
151	(First part) Resolution, approval, etc., on Braddock School
168	Letter from PWA to Crafton Borough re awarding of contracts
169	Resolution of Crafton Borough awarding contracts
184	Filtration Plant, Braddock, Contract
190	Release from Ross to Braddock Borough and letter
197	Shaler Township Softening Plant Contract
206	Kenmawr School Contract
213	(First check) Check of Kennedy Twp. School District to Craig
217	Library School Contract

No.	Description
236	Letter from PWA to N. Fayette Twp. School District re additional funds
245	(One part) Periodical estimate No. 8 on West View School and draft in payment thereof
250	East Ohio Street Grade Crossing Contract
251	North Park Bath House Contract
261	East End Elementary School Contract
264	(One part) Receipt of McKeesport School District dated 5/9/39
265	Form 290 on McKeesport E. E. School
272	Resolution of Mifflin Twp. School Board cancelling check to Craig
274	North Park Boat House Contract
282	County Home, Woodville, Contract
287	Homeville School Contract
292	Juvenile Court Contract
297	(One part) Change order on Crescent School
298	North Fayette High School Contract
299	Hampton School Addition Contract
301	Letter from Hampton Twp. School District notifying Carter to begin work
551	Application for loan and grant by Mt. Lebanon
553	Edwin Markham School Contract
556	Lincoln School, Mt. Lebanon, Contract
560	West View High School Contract
562	Magee Playground Contract
564	Cowley-Goetmann Playground Contract
566	Burgwin Playground Contract
568	Schenley Park Comfort Station Contract
570	McKinley Park Field House Contract
572	Sophia Evert No. 1 Field House Contract 14
574	Townsend Playground Field House Contract
576	Larimer Playground Field House Contract
580	West Penn Playground Contract
584	Armstrong Playground Field House Contract
588	Sophia Evert No. 4 Playground Contract 29

No.	Description
590	Garfield Playground Field House Contract
592	Schenley, etc. Filter Houses Contract
594	Homewood, etc. Filter Houses Contract
599	Crafton Municipal Bldg. Contract
614	Contract between Braddock Borough and Chester Engineers
618	Municipal Airport Contract E
619	Municipal Airport Contract F
628	(Part) Bid of Iron City Eng. Co. on Airport
629	Jerome Street Bridge Contract
636	Braddock Jr. High School Contract
A	Contract between Crafton Borough and architects
D-47	Colonel Carter's Commission
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11.	Motion for new trial.
12.	Opinion.
13.	Order of court entered August 13, 1941.
14.	Final judgment.
15.	Notice of appeal with date of filing.
16.	This designation.

No.	Description
17.	Statement of the points on which appellants intend to rely.

WILLIAM H. ECKERT,
EUGENE B. STRASSBURGER,
J. VINCENT BURKE, JR.,
Attorneys for Appellants.

JOHN B. NICKLAS, JR.,
Of Counsel.

Acceptance of Service.

Service of the foregoing designation is hereby accepted this 7 day of November, 1941.

CHAS. J. MARGIOTTI,
MARGIOTTI & PUGLIESE,
JOSEPH H. REICH,
JOSEPH A. ROSSI,
Attorneys for Plaintiffs.

Points to Be Raised on Appeal.

A concise statement of the points on which appellants intend to rely on their appeal in the above-entitled case is as follows:

1. There is no statutory authorization for this suit.
2. The present action subjects the defendants to double jeopardy.
3. The sanction of the Commissioner of Internal Revenue and of the Attorney General is a prerequisite to such a suit.
4. Corporations are not liable under R. S. § 3490.
5. There is not sufficient evidence to sustain the judgment against C. W. Ridinger, Sr., or Warren I. Bickford.
6. Because of the specific maximum limitation upon each PWA grant, the damages cannot be measured.

Acceptance of Service.

7. Only one \$2,000 penalty may be included in the judgment.

8. The verdict is inconsistent in exonerating Carmack.

9. Defendants' evidence to prove the actual cost of performing the work should have been admitted.

10. Defendants' character evidence should have been admitted.

11. Defendant Carter is not liable because of his military commission.

12. A juror should have been withdrawn because plaintiff's counsel in his closing address to the jury argued that an adverse inference should be drawn from defendants' pleas of *nolo contendere*.

WILLIAM H. ECKERT,
EUGENE B. STRASSBURGER,
J. VINCENT BURKE, JR.,
Attorneys for Appellants.

JOHN B. NICKLAS, JR.,
Of Counsel.

Acceptance of Service.

Service of the foregoing is hereby accepted this 7 day of November, 1941.

CHAS. J. MARGIOTTI,
MARGIOTTI & PUGLIESE,
JOSEPH H. REICH,
JOSEPH A. ROSSI,
Attorneys for Plaintiffs.

IN THE
United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT

NO. 741.

UNITED STATES OF AMERICA ex rel. MORRIS L.
 MARCUS, and MORRIS L. MARCUS in His
 Own Behalf,

v.

WILLIAM F. HESS et al., Appellants.

APPELLANTS' APPENDIX.

VOL. II.

Appeal from the Judgment of the District Court of the
 United States for the Western District of
 Pennsylvania at No. 748 Civil Action.

WILLIAM H. ECKERT
 EUGENE B. STRASSBURGER
 J. VINCENT BURKE, JR.
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 THOMAS D. McCLOSKEY
 JOHN B. NICKLAS, JR.
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 FERDINAND T. WEIL
 GIFFORD K. WRIGHT

RECEIVED & FILED

JAN 16 1942

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VOL. II.

APPELLANTS' APPENDIX.

Revised Statutes, Sections 3490-3494*.

Sec. 3490. Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title "CRIMES," shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.

Sec. 3491. The several district courts of the United States, the supreme court of the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall, wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit. Such suit may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent.

Sec. 3492. It shall be the duty of the several district attorneys of the United States for the respective

* Taken from the official edition of the Revised Statutes. They may also be found in 2 Fed. Stat. Ann., (2 ed.), pp. 208-210, and in 6 U. S. Comp. Stat., §§6411-6415.

districts, for the District of Columbia, and for the several Territories, to be diligent in inquiring into any violation of the provisions of section thirty-four hundred and ninety by persons liable to such suit, and found within their respective districts or Territories, and to cause them to be proceeded against in due form of law for the recovery of such forfeiture and damages. And such person may be arrested and held to bail in such sum as the district judge may order, not exceeding the sum of two thousand dollars, and twice the amount of the damages sworn to in the affidavit of the person bringing the suit.

Sec. 3493. The person bringing said suit and prosecuting it to final judgment shall be entitled to receive one-half the amount of such forfeiture, as well as one-half the amount of the damages he shall recover and collect; and the other half thereof shall belong to and be paid over to the United States; and such person shall be entitled to receive to his own use all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court: *Provided*, That such person shall be liable for all costs incurred by himself in the case, and shall have no claim therefor on the United States.

Sec. 3494. Every such suit shall be commenced within six years from the commission of the act, and not afterward.

Revised Statutes, Section 5438*.

Sec. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives

* Taken from the official edition of the Revised Statutes.

404 1908 Amendment to Revised Statutes § 5438.

in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars.

The 1908 Amendment to Revised Statutes § 5438*.

CHAP. 235—An Act To amend section fifty-four hundred and thirty-eight of the Revised Statutes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That section fifty-four hundred and thirty-eight of the Revised Statutes be, and the same is hereby, amended to read as follows:

"Sec. 5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any

* Taken from the official edition of the Statutes at Large, 35 Stat. 555. It may also be found in 7 Fed. Stat. Ann., p. 534.

agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be imprisoned at hard labor for not more than five years, or fined not more than five thousand dollars; and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be punished by imprisonment for not more than two years and by a fine not exceeding five hundred dollars."

Approved, May 30, 1908.

**Section 35 and a Portion of Section 341 of the
Criminal Code of 1909*.**

Sec. 35. Whoever shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, shall make or use, or cause to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; or whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States or willfully to conceal such money or other property, shall deliver or cause to be delivered, to any other person having authority to re-

* Taken from the official edition of the Statutes at Large, 35 Stat., 1095, 1153, 1159. They may also be found in 7 Fed. Stat. Ann., pp. 523, 989, 990, 996, and in 10 U. S. Comp. Stat., §§10199, 10515. This is part of the Act of March 4, 1909, Chap. 321.

Section 35 of the Criminal Code differed from Revised Statutes, §5438, as amended, in the following particulars, as explained in 7 Fed. Stat. Ann. at p. 524:

"The material alterations made by the section given in the text were the substitution of the initial word 'Whoever' for the words 'Every person who,' and the changes in the form of the words rendered necessary thereby, the insertion of the words 'or both' after the words 'five years,' and the insertion of 'sailor, officer, or person' preceding the words 'under a clothing allowance.'"

ceive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both. And whoever shall knowingly purchase or receive in pledge for any obligation or indebtedness from any soldier, sailor, officer, or other person called into or employed in the military or naval service, any arms, equipments, ammunition, clothes, military stores, or other public property, whether furnished to the soldier, sailor, officer, or person, under a clothing allowance or otherwise, such soldier, sailor, officer, or other person not having the lawful right to pledge or sell the same, shall be fined not more than five hundred dollars, and imprisoned not more than two years.

Sec. 341. The following sections of the Revised Statutes and Acts and parts of Acts are hereby repealed: . . . sections fifty-four hundred and thirteen to fifty-four hundred and eighty-four, both inclusive;

An Act entitled An "Act to amend section fifty-four hundred and thirty-eight of the Revised Statutes," approved May thirtieth, nineteen hundred and eight.

Also all other sections and parts of sections of the Revised Statutes and Acts and parts of Acts of Congress, in so far as they are embraced within and superseded by this Act, are hereby repealed; the remaining

408 1918 Amendment to Criminal Code § 35.

portions thereof to be and remain in force with the same effect and to the same extent as if this Act had not been passed.

The 1918 Amendment to Section 35 of the Criminal Code*.

CHAP. 194—An Act To amend section thirty-five of the Criminal Code of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That section thirty-five of the Criminal Code of the United States be, and the same hereby is, amended to read as follows:

"Sec. 35. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or

* Taken from the official edition of the Statutes at Large, 40 Stat. 1015. Italics indicate new language added by this amendment.

used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or *any corporation in which the United States of America is a stockholder*, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property

410 *1934 Amendment to Criminal Code § 35.*

furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than \$500 or imprisoned not more than two years, or both."

Approved October 23, 1918.

**The 1934 Amendment to Section 35 of the
Criminal Code*.**

CHAP. 587—Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, *in any mat-*

* Taken from the official edition of the Statutes at Large, 48 Stat. 996. Italics indicate new language added by this amendment.

ter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall take and carry away or take, for his own use, or for the use of another, with intent to steal or purloin, or shall willfully injure or commit any depredation against, any property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, or any property which has been or is being made, manufactured, or constructed under contract for the War or Navy Departments of the United States; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than \$10,000 or

imprisoned not more than ten years, or both. And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than \$500 or imprisoned not more than two years, or both.

Approved June 18, 1934.

Revised Statutes, Sections 3213-3214*.

Sec. 3213. It shall be the duty of the collectors, in their respective districts, subject to the provisions of this Title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam* or otherwise, before any circuit or district court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the

* Taken from the official edition of the Revised Statutes. It may also be found in 3 Fed. Stat. Ann., (2 ed.), p. 1025, and in 6 U. S. Comp. Stat., §§5937-5938.

U.S. ex rel. Salzman v. Salant—Amended Complaint. 413

United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

Sec. 3214. No suit for the recovery of taxes, or of any fine, penalty, or forfeiture shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: *Provided*, That in case of any suit for penalties or forfeitures brought upon information received from any person other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA on the
relation of MEYER SALZMAN,
Plaintiff,

—against—

SALANT & SALANT, INC.,
Defendant.

In Law 69—214

Plaintiff for his amended bill of complaint, as relator complaining of the defendant, by ALEXANDER SAVANUCK, his attorney, alleges:

For a First Cause of Action.

FIRST: That your relator, MEYER SALZMAN is a citizen of the United States and resides in the County of Kings City and State of New York, Eastern District of New York.

SECOND: That the defendant, Salant & Salant, Inc. is a domestic corporation organized and existing under and by virtue of the laws of the State of New York and

414 U.S. ex rel. Salzman v. Salant—Amended Complaint.

maintains its office and principal place of business at 56 Worth Street, in the Borough of Manhattan, City and State of New York, in the Southern District of New York; that at all times hereinafter mentioned, the officers of the defendant, SALANT & SALANT, INC. were the following: — GABRIEL SALANT, President, AARON B. SALANT, Treasurer, SOL J. WALLACH, Vice President, SOL J. YASPAN, Secretary, and upon information and belief, said officers above named were also directors and stockholders of the defendant corporation.

THIRD: The AMERICAN NATIONAL RED CROSS is an incorporated association existing under and by virtue of an Act of Congress and maintains its principal office in the City of Washington, District of Columbia; the President of the United States is the President of said corporation and the Directors thereof include representatives of the Department of State, Treasury, Navy, War and Justice, each such representative appointed by the President of the United States; that the accounts of said corporation are audited by the War Department of the United States and said American National Red Cross performs certain services assigned to it from time to time by the United States Government and renders its periodic reports to the Congress of the United States.

FOURTH: That this is a relator's action pursuant to Sections 3490, 3491 and 5438 of the Revised Statutes of the United States for damages divisible between the United States Government and the relator in a sum in excess of Three Thousand (\$3,000.00) Dollars, predicated upon alleged frauds practiced upon the United States Government in defrauding the United States Government of its property; that the aforesaid sections of the Revised Statutes of the United States read as follows:

"3490. Any person not in the military or naval force of the United States, or in the militia called

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into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, titled "Crimes" shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

"3491. The several district courts of the United States, the supreme court of the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try and determine such suit. Such suit may be brought and carried on by any person, as well for himself as for the United States, the same shall be at the sole cost and charge of such person, and shall be in the name of the United States but shall not be withdrawn or discontinued, without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent."

"#5438. Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious or fraudulent or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used,

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any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who with intent to defraud the United States or wilfully to conceal such money or other property, delivers or causes to be delivered to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein, and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer or other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars."

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The above sections may be found, with certain changes, in Sections 231, 232, 233, 234, 235 *et seq.* Title 31, U. S. C. A.

FIFTH: That heretofore and prior to the commencement of this action the 72nd Congress of the United States, meeting in a period of great stress and desiring to aid those of the citizens of the United States affected by such adverse conditions did, by joint resolution, duly approved by the President of the United States on the 8th day of February, 1933 authorize the designation of the AMERICAN NATIONAL RED CROSS as agent of the United States Government to receive cotton to be manufactured into, exchanged for or disposed of and proceeds used for acquiring cloth or wearing apparel or other articles of clothing, or bedding made of cotton, and distribute same to the needy citizens of the United States; that resolution further provided that such manufacture, exchange or sale shall be without profit to any mill, organization or other person; such resolution further provided that application for such cotton which was at all times the property of the United States Government should be delivered only upon the approval of the President of the United States on such application presented to him and only such amounts as the President may approve.

SIXTH: Acting upon the provisions of the resolutions of Congress above mentioned, the AMERICAN NATIONAL RED CROSS applied for and received certain quantities of cotton, property of the United States Government, and proceeded to convert same into articles of clothing, wearing apparel, etc., as above alleged.

SEVENTH: That thereafter, the AMERICAN NATIONAL RED CROSS publicized its intentions to buy clothing of all sorts with the government owned cotton above alleged, to be distributed in accordance with and the

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authority of the resolution of Congress above mentioned.

EIGHTH: That the said cotton, clothing, wearing apparel, etc., into which said cotton was converted, as above alleged, at all times remained the property of the United States Government and was ear marked as such; that the articles of clothing, wearing apparel, etc., were distributed by the American National Red Cross and received by the ultimate recipients of this form of government relief as the United States Government property; that all forms, papers and documents used in the execution of the purposes of said resolution of Congress identified the said cotton and articles into which it was converted as United States Government property; that all directions given by the American National Red Cross to the mills and manufacturers from whom these articles were purchased with the said government owned cotton required such articles to be labeled as government owned property and prohibited the use of any label of the manufacturer, mill or of the American National Red Cross label or insignia which is ordinarily used on articles purchased with American National Red Cross funds; and in accordance with the statute for such cases made and provided, the contracts in question provided that all manufacture or conversion of the cotton must be in free labor plants and not in prison plants.

NINTH: The defendant, SALANT & SALANT, INC., acting upon information mentioned in paragraph "SEVENTH" above, entered into a series of contracts with the AMERICAN NATIONAL RED CROSS for the purchase of some Eighty-eight thousand (88,000) dozen work shirts by the said government agent, the AMERICAN NATIONAL RED CROSS, at prices ranging from Four (\$4.00) Dollars to Six (\$6.00) Dollars per dozen, wherein and whereby the defendant was to manufacture and deliver to the respective chapters of the AMERICAN NATIONAL RED

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Cross over a period starting from May, 1933 and terminating on or about the month of December, 1933. Said contracts further provided "all merchandise must be manufactured in the plant named in the contract unless specific written authority is given to manufacturer at other locations. No prison labor may be used in this production." In addition to the specific prices for the work shirts as hereinabove mentioned, the United States Government Agent, the AMERICAN NATIONAL RED CROSS, further agreed to pay to the defendant on any unfilled installment of the merchandise in question such actual increases in processing cost as may result to it from possible legislation limiting the days or hours of labor or any other minimum wage legislation, provided the exact proposed increase in price is established to the satisfaction of the United States Government Agent, the AMERICAN NATIONAL RED CROSS and agreed to by it, and the particular contract amended in writing accordingly before the unfilled installments to be affected by such increase are placed in production; and said contracts specifically referred to the Act of Congress above mentioned, disclosed the principal, the United States Government and provided against any profit by any mill, organization or person in the fulfillment of said contract.

TENTH: The defendant, SALANT & SALANT, accepted said contracts and duly entered upon the execution of the terms and conditions by it to be fulfilled under said instruments.

ELEVENTH: The defendant, SALANT & SALANT, INC., failed and neglected to fulfil its terms and obligations by it to be performed under contracts above mentioned, but instead caused about sixty per cent (60%) of the work shirts in question to be manufactured in its prison plants maintained at Rhode Island State Penitentiary, Howard, R. I., Ionia Reformatory, Ionia, Michigan, State

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Penitentiary, West Nashville, Tennessee, Reformatory, West Nashville, Tennessee, State Penitentiary, Ford Madison, Iowa, and Missouri State Penitentiary, Jefferson City, Missouri, and arranged an illegal and fraudulent plan wherein and whereby said work shirts so manufactured in the prison factories above mentioned were shipped to the free plants owned and operated by the defendant at Brooklyn, New York, Portland, Michigan, Martin, Tennessee, Lawrenceberg, Tennessee and Scottsburg, Indiana, with instructions to the defendant's agents, servants and employees at such free labor factories that said prison made shirts be repacked so as to remove all indications of prison manufacture and shipped to the respective AMERICAN NATIONAL RED CROSS chapters in accordance with shipping instructions received from the headquarters of said AMERICAN NATIONAL RED CROSS at Washington, D. C. as free labor goods in supposed fulfillment of the obligations of this defendant under contracts above mentioned; and in accordance with this unlawful and fraudulent scheme about sixty per cent (60%) of the work shirts to be delivered under the aforementioned contracts were so manufactured in prison factories, shipped to free factories, there repacked to remove signs of prison manufacture and thereafter shipped to the various chapters of the AMERICAN NATIONAL RED CROSS.

TWELFTH: That by manufacturing the said 60% of the contracts above mentioned, this defendant, SALANT & SALANT, INC., made an illegal profit in the saving it affected to the extent of the difference between the labor charge which this defendant would be compelled to pay if the goods in question were actually manufactured in its free plants and the lesser amount which this defendant actually did pay for labor in its prison plants, or a saving of about One (\$1.00) Dollar per dozen, or in all a saving of about fifty-five Thousand (\$55,000) Dol-

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lars, which saving accrued as an illegal profit and in breach of that part of the contract which specially prohibited the making of the shirts in question in prison factories.

THIRTEENTH: This defendant, SALANT & SALANT, INC., through its agents, servants or employees, did present statements under oath and vouchers to the said agent of the United States, the AMERICAN NATIONAL RED CROSS and did collect monies of the United States on such statements and vouchers, and contrary to the provisions of the above contracts, did defraud the United States Government of the sum of approximately Fifty-five thousand (\$55,000.00) Dollars.

For a Second Cause of Action.

FOURTEENTH: Plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs marked "FIRST", "SECOND", "THIRD", "FOURTH", "FIFTH", "SIXTH", "SEVENTH", "EIGHTH" and "NINTH" of this complaint with the same force and effect as if fully set forth herein.

FIFTEENTH: That during the performance by this defendant of the contracts mentioned in paragraph "EIGHTH" above, the defendant, SALANT & SALANT, INC., signed the Cotton Blanket Code adopted by the cotton industry pursuant to the provisions of the National Industrial Recovery Act and became entitled and empowered by becoming such signatory to the Cotton Blanket Code to pass to the vendee, the United States Government Agent, the AMERICAN NATIONAL RED CROSS, the increased costs it may incur by the reduction of hours of labor and increase of wages of labor in the manufacture of work shirts by it yet to be processed and delivered in accordance with its obligations of the contracts mentioned in paragraph "EIGHTH" above.

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SIXTEENTH: Upon information and belief, that this defendant, SALANT & SALANT, INC., although it signed the Cotton Blanket Code as aforementioned, did not reduce the hours of labor or increase the wages of labor of the convict operators in its prison factories, nor did this defendant increase its pay to the respective States, wherein it operated prison factories, for the use of the State's convict labor, yet at the same time this defendant claimed and obtained an increase of about One Dollar and fifty-five cents (\$1.55) per dozen on work shirts which it thereafter manufactured in prison factories, claimed and obtained an increase of about One Dollar and fifty-five cents (\$1.55) per dozen on prison made work shirts which had already been manufactured, shipped to a free labor plant and there repacked to appear as free factory products, and claimed and obtained an increase of about One Dollar and Fifty-five (\$1.55) cents per dozen for goods made in its free labor factories and which were either already completed or partially completed, thereby making and obtaining an illegal profit, obtained by the perpetration of frauds upon the Government of the United States to the extent of about Eighty-five Thousand (\$85,000.00) Dollars.

For a Third Cause of Action.

EIGHTEENTH: Plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs marked "FIRST", "SECOND", "THIRD", "FOURTH", "FIFTH", "SIXTH", "SEVENTH", "EIGHTH" and "NINTH" of this complaint with the same force and effect as if fully set forth herein.

NINETEENTH: This defendant, SALANT & SALANT, INC., in quoting the prices which it obtained in the aforementioned agreements with the United States Agent, the AMERICAN NATIONAL RED CROSS, knowingly and pur-

posedly included in said prices, contrary to the written contracts above mentioned and contrary to the Act of Congress above mentioned a sum over and above the actual cost to this defendant of the manufacture of the work shirts in question:

TWENTIETH: That the margin of profit included in the said contracts as mentioned in the next preceding paragraph was about seventy-five cents (.75¢) per dozen, making a total of the entire profit exclusive of the additional profits mentioned in the First and Second Causes of Action herein, a sum of approximately Seventy Thousand (\$70,000.00) Dollars.

TWENTY-FIRST: That upon information and belief, this defendant, SALANT & SALANT, INC., through its agents, servants and employees did present statements under oath and vouchers to the said agent of the UNITED STATES, the AMERICAN NATIONAL RED CROSS, and did collect monies of the United States on said statements and vouchers and contrary to the provisions of the above contracts and the Act of Congress did defraud the Government of the United States of the sum of approximately Seventy Thousand (\$70,000.00) Dollars.

For a Fourth Cause of Action.

TWENTY-SECOND: Plaintiff repeats, realleges and reiterates each and every allegation contained in paragraphs marked "FIRST", "SECOND", "THIRD", "FOURTH", "FIFTH", "SIXTH", "SEVENTH", "EIGHTH", "NINTH", "TENTH", "ELEVENTH", "TWELFTH", "THIRTEENTH", "FIFTEENTH", "SIXTEENTH", "SEVENTEENTH", "NINETEENTH", "TWENTIETH" and "TWENTY-FIRST" of this complaint with the same force and effect as if fully set forth herein.

TWENTY-THIRD: That the fraudulent acts above alleged were participated in by the officers of the de-

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defendant enumerated in paragraph marked "Second" of this complaint, with the exception of SOL J. WALLACH; Vice President of the defendant and the said fraudulent acts and each and every one of them were perpetrated by the defendant and the said officers of the defendant pursuant to a plan, scheme and conspiracy to defraud the government of the United States of its property, to-wit: the government owned cotton or the proceeds thereof which Congress had authorized to be distributed to the distressed and needy citizens of the United States as a form of government relief through the American National Red Cross, and in obtaining and aiding the defendant to obtain payment and allowance of the false and fraudulent claims as above set forth in detail out of the government owned cotton and/or the proceeds thereof.

TWENTY-FOURTH: That by reason of the foregoing, the government of the United States was defrauded by the defendant and its co-conspirators as above alleged of the sum of TWO HUNDRED TEN THOUSAND (\$210,000.00) Dollars.

WHEREFORE, Plaintiff demands judgment against this defendant in the sum of TWO HUNDRED TEN THOUSAND (\$210,000.00) DOLLARS and appropriate interest, plus TWO THOUSAND (\$2,000.00) DOLLARS, plus other statutory penalties, and for such other and different relief as may be proper, together with the costs and disbursements of this action.

MEYER SALZMAN,
Relator.

ALEXANDER SAVANUCK,
Attorney for Plaintiff,
Office & P. O. address,
25 West 43rd Street
Borough of Manhattan
City of New York.

Verified by plaintiff August 8, 1938.

Memorandum.**PATTERSON, D. J.**

The original complaint having been found insufficient, the plaintiff served an amended complaint. The defendant moves to dismiss the amended complaint.

In a popular sense the cotton turned over to the Red Cross might be called government cotton, just as ships owned by the Emergency Fleet Corporation were called government ships. But in a legal sense, and it is only in a legal sense that section 5438 of the Revised Statutes can be violated, the cotton was not owned by the government. As the Resolution of February 9, 1933 shows on its face, the cotton was the property of the Cotton Stabilization Corporation to which the government had made loans; the government, by cancelling loans and advancing funds for release of the cotton from other loans, caused the cotton to be donated to the Red Cross for relief of the needy, the cotton to be made into garments by the Red Cross, or exchanged for garments by the Red Cross, or sold and the proceeds used to buy garments. When the Red Cross sold the cotton and devoted the proceeds toward purchase of garments, a seller of garments who presented to the Red Cross false claims for payment did not, within the compass of section 5438, present "to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof" nor did such a seller make or use any false bill, voucher or other paper "for the purpose of obtaining or aiding to obtain the payment or approval of such claim," meaning a claim upon or against the government or a department or officer thereof, nor did such seller "enter into any agreement, combination or conspiracy to defraud the Government of the United States or any department or

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officer thereof". See *UNITED STATES V. STRANG*, 254 U. S. 491.

The allegations in the amended complaint to the effect that the cotton remained the property of the United States and was marked as such, that the money collected by the defendant was money belonging to the United States, and similar allegations are conclusions of the plaintiff which are contrary to the Resolution of February 8, 1933. They are not admitted to be true on motion to dismiss. The amended complaint is insufficient on its face, and the motion to dismiss will be granted.

ROBERT P. PATTERSON,
United States District Judge.

September 2, 1938.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA on the relation
of ROBERT A. GILCHRIST and ROBERT A.
GILCHRIST in his own behalf, Plaintiffs,
—against—

L 58/272

AMERICAN COTTON COOPERATIVE ASSOCI-
ATION, BUNGE NORTH AMERICAN GRAIN
CORPORATION, et al., Defendants.

Opinion of the Court.

KNOX, D. J.
filed 5/20/35
Op. # 9112

Beyond observing that this complaint asks no more than that plaintiff recover judgment against defendants in the sum of \$1,129,533,000.00 with interest, the comprehensive nature of its allegations, and the manner in

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which they are averred need not be discussed. It is enough to say that upon the facts set forth in the complaint, plaintiff is not entitled to maintain the suit. The statutes under which a right of action is here claimed have recently been construed by Judge Gibson in *Olson v. Mellon*, which also bears the designation of *United States ex rel. Knight v. Mellon*, 4 Fed. Supp. 947. The discussion there had was so complete and satisfactory that the Circuit Court of Appeals for the Third Circuit adopted the opinion of the District Court as its own and affirmed the judgment. The interpretation of the law is decisive of plaintiff's lack of legal qualification to bring this action. I see no reason why I should not accept the views to which Judge Gibson gave expression, and grant the motions that are here made to dismiss plaintiff's complaint. Such disposition of the instant action is further fortified by the decisions reached in *United States v. Cohn*, 270 U. S. 339, 345, and in *United States ex rel. Boyd v. McMurtry et al.* 5 Fed. Supp. 515. See also *Capone v. United States*, 51 Fed. (2nd) 609.

In consideration of the fact that the complaint is to be dismissed and that plaintiff cannot qualify so as to file another, I am without the necessity of ruling upon defendants' motion that plaintiff be required to file a bond for costs.

Motions to dismiss are granted.

JNO. C. KNOX,
U. S. D. J.

May 20, 1935.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

MARTIN E. MANDEL, as well for him-
self as for the UNITED STATES OF
AMERICA, Plaintiff,

—against—

THE COOPER CORPORATION, et als.,
Defendants.

Civ. No. 13-387.

Opinion of the Court.

COXE, D. J.:

This is a motion by the defendants to dismiss the complaint for insufficiency, or, in the alternative, for summary judgment in their favor.

The action is brought by an informer under the informer statute (31 U. S. C. A. §§ 231-235) to recover forfeitures and double damages for presenting various alleged fraudulent claims to the government for payment. The material portions of the statute are as follows:

"Any person . . . who shall make . . .
or present for payment or approval . . . any
claim upon or against the Government . . .
knowing such claim to be false, fictitious or fraudu-
lent, or who, for the purpose of obtaining . . .
the payment or approval of such claim, makes
. . . any false bill, receipt, voucher, roll, ac-
count, claim, certificate . . . knowing the same
to contain any fraudulent or fictitious statement or
entry, or who enters into any agreement, combina-
tion or conspiracy to defraud the government . . .
by obtaining . . . the payment or allowance of
any false or fraudulent claim", shall

forfeit and pay to the United States the sum of \$2,000.

and, in addition, double the amount of damages sustained. (31 U. S. C. A. § 231).

The complaint alleges that the defendants procured the payment of fraudulent claims against the government in violation of the above provisions. The charge is that the defendants conspired to defraud the government by submitting collusive bids "indetical to the penny", to the procurement division of the government with respect to the rubber tire requirements of the government for three purchasing periods of six months each; that the bids for two of these purchasing periods were accepted by the government, and purchases thereunder were made by various government departments; and that as a result of such collusive non-competitive bids, the government was forced to pay substantially higher prices for its tire requirements than it would have paid had the bids been competitive. It is also charged that the defendants used in support of their claims "false vouchers and receipts" containing "fraudulent statements, to wit, "that the contract prices involved in the claims were not "fixed through collusive bidding". The damage alleged is the difference between the amount of the non-competitive bids and the prices at which the government could have purchased the tires had the bids been competitive.

The action was commenced following the dismissal of a prior action instituted by the government to recover treble damages under Section 7 of the Sherman Anti-trust Act, in which the Supreme Court held that the term "person" used in Section 7 did not include the United States, and that consequently the United States could not maintain the action. *United States vs. Cooper Corp.* 312 U. S. 600. The present complaint is substantially the same as the government's complaint in the anti-trust action, except that general allegations have been added to bring the case within the language of the informer statute.

The complaint makes no charge that the defendants presented false or fictitious claims to the government for payment; it merely alleges that the claims were fraudulent because collusive bids, "identical to the penny", were submitted by the defendants. The claims involved are the ones covering the purchases of the government during the first two purchasing periods; the bids submitted by the defendants for the third purchasing period were rejected by the government, and never ripened into claims at all. With respect to the purchases during the first two purchasing periods, it clearly appears from the affidavits of the defendants that the prices bid were not the result of any agreement among bidders. I think, therefore, that the allegation of the complaint that "fraudulent statements" were made that "the contract prices involved in the claims were not fixed through collusive bidding" has been disproved, and may be disregarded.

Were the claims of the defendants fraudulent within the meaning of the former statute? "A fraudulent claim against the government is a false or fictitious claim, gotten up or contrived by some person or persons with the intent to present it for approval and thus to defraud the government". *United States vs. Shapleigh*, 54 Fed. 126, 128. Clearly, the present claims were neither false nor fictitious. *United States vs. Shapleigh* (supra). The fraud alleged is that the defendants submitted collusive, non-competitive bids to the government for its tire requirements. It is also charged that as a result the government was forced to pay more for its tires than it would have paid had the bids been competitive. The bids now assailed became contracts when they were accepted, and, under the contracts, the defendants sold and delivered to the government quantities of tires, for which the government paid the contract prices.

The plaintiff in effect says that the contracts were

induced by fraud. This, if true, would give the government, on discovery of the fraud, a choice of remedies, namely, either (1) to rescind the contracts, restore what had been received, and recover what had been paid, or (2) to enforce the contracts and recover the damages resulting from the fraud. These remedies are antagonistic, and the government could not have them both. *People vs. Stephens*, 71 N. Y. 527; 553; *Wilson vs. New United States Cattle-Ranch Co.*, 73 Fed. 994; *Cheney vs. Dickinson*, 172 Fed. 109. Moreover, a suit by the government for damages for fraud in inducing the contracts would sound in tort and not on contract. *Chanin vs. Chevrolet Motor Co.*, 89 F. (2d) 889.

The present action sounds in tort. It really is an action for damages for alleged fraudulent representations in the procurement of contracts to supply the tire requirements of the government during the periods in question. It is not an action for damages sustained by the government by reason of the presentation for payment or approval of fraudulent claims within the meaning of the informer statute.

It is significant to note that although the informer statute was originally enacted in 1863 (U. S. Stats. at Large, Vol. 12, p. 698), with the exception of *Marcus vs. Hess*, W. D. of Pa. (1941, unreported) no case has been found in which either the government or an informer has sought to recover under the statute because of contracts allegedly procured through fraudulent representations. *Marcus vs. Hess* is plainly distinguishable on the facts.

The motion of the defendants for summary judgment in their favor dismissing the complaint is granted.

December 9, 1941.

(Sgd.) ALFRED C. COXE,
U. S. D. J.

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**APPENDIX TO
SUPPLEMENTAL BRIEF FOR APPELLANT,
EDWIN C. CARTER**

(Filed Jan. 16, 1942)

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APPENDIX.

[476] *Mr. Strassburger* (At Side Bar): For the purpose of showing Mr. Edwin C. Carter, one of the defendants, was in the military forces of the United States during all of the time covered by the complaints alleged, counsel for defendant offer in evidence Defendants' Exhibit D-46, being a commission of the President of the United States of America appointing Edwin Cleveland Carter, Jr. Colonel of Field Artillery in the Army of the United States, dated March 16, 1931, said commission to continue for a period of five years from January 21, 1931; and Exhibit D-47, being a commission of the President of the United States, dated December 23, 1935, commissioning the said Edwin Cleveland Carter, Jr. Colonel of Field Artillery in the Army of the United States for a period of five years beginning January 21, 1936. All for the purpose of showing that the said defendant Carter does not fall within the terms of Section 3490 of the revised statutes of 1874; and cannot be held in this action.

[477] *Mr. Fiok*: The offer is objected to as incompetent, irrelevant, and immaterial; and further, for the reason that these commissions show that Mr. Carter is a reserve officer; for the further reason that the Act under which the plaintiffs are proceeding does not contemplate the inclusion of reserve officers unless and until called into active service.

The Court: It not appearing in the defendants' offer that Colonel Carter was called to active service or was in active service in the United States Army during any of the periods involved in this litigation, we sustain the objection.

Mr. Strassburger: Defendants offer in evidence Exhibit D-48, being a certificate of Major General Grant, by Edwin O. Shaw, Acting Assistant Adjutant General, dated March 26, 1941, to show the

active service of Colonel Carter from July 28, 1925 to July 22, 1939; also showing his service was continuous until January 22, 1940.

The Court: With further reference to the certificate of the Commanding General of the Third Corps Area, showing the military service of the reserve officer, Edwin Cleveland Carter, from November 27, 1917 to the date of his resignation as a reserve officer, and showing also his service during certain periods of active duty training while in the Officers' Reserve Corps, we do not find anything on this certificate which causes us to modify the ruling we have already made. We are of the opinion that the Act referred to has no reference or application to this particular defendant.

Mr. Strassburger: Attention of the Court is called to the fact that Section 3490 of the revised statutes of 1874 says: "Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of Section 5438 under the title 'Crimes' shall forfeit and pay", and so forth. This section of the Act we submit does not require proof that Colonel Carter was in the active military service, the active service being confined to the State Militia, and for that reason we again urge that the offer be admitted.

The Court: Hearing the further offer of counsel for defendant in this respect, we are of the opinion that the matters he has called to our attention have no force and bearing upon the application of this Act to the defendant Carter. It does not appear by the evidence in this case that there was any act committed by him or any of the transactions incurred by him were committed, so far as he is con-

cerned, while he was even on active duty for training periods during the time stated in the certificate.

Defendants' Exhibit D-47.

**THE
PRESIDENT
OF**

**THE UNITED STATES OF AMERICA
E PLURIBUS UNUM**

(Cut of Spread Eagle)

To all who shall see these presents, greeting:

Know Ye, that reposing special trust and confidence in the patriotism, valor, fidelity and ability of EDWIN CLEVELAND CARTER, JUNIOR, I do appoint him Colonel of Field Artillery in

THE ARMY OF THE UNITED STATES

such appointment to date from the twenty-first day of January, nineteen hundred and thirty-six. He is therefore carefully and diligently to discharge the duty of the office to which he is appointed by doing and performing all manner of things thereunto belonging.

He will enter upon active duty under this commission only when specifically ordered to such active duty by competent authority.

And I do strictly charge and require all Officers and Soldiers under his command when he shall be employed on active duty, to be obedient to his orders as an officer of his grade and position. And he is to observe and follow such orders and directions, from time to time, as he shall receive from me, or the future President of the United States of America, or the General or other Superior Officers set over him, according to the rules and discipline of War.

Appendix.

This Commission evidences an appointment in the Army of the United States, under the provisions of section 37, National Defense Act, as amended, and is to continue in force for a period of five years from the date above specified, and during the pleasure of the President of the United States, for the time being.

Done at the City of Washington, this twenty-third day of December, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the United States of America the one hundred and sixtieth.

By the President:

ALFRED J. BOOTH
Adjutant General.

W. D., A. G. O. Form No. 0650 C.
February 1, 1934

Defendants' Exhibit D-48.

HEADQUARTERS THIRD CORPS AREA
UNITED STATES ARMY
Baltimore, Maryland

201-Carter, Edwin Cleveland.
-100 (78)

March 8, 1941.
f16.

CERTIFICATE

The records of this headquarters show that Edwin C. Carter, Serial Number 0-148818, was on active duty as a reserve officer, from November 27, 1917 to January 27, 1919. He accepted appointment as Major, FA-Res. on March 30, 1919. He accepted promotion to Lieutenant Colonel, FA-Res. on January 11, 1924. Promoted to Colonel, FA-Res. on January 21, 1931; accepted promotion January 27, 1931. Resignation accepted January 22, 1940, per letter, War Dept., same date. He served on the following periods of active duty training while in

Appendix.

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the Officers' Reserve Corps: 7-26-25 to 8-9-25; 2-6-27 to 2-20-27; 7-17-27 to 7-30-27; 7-1-29 to 7-14-29; 7-6-30 to 7-19-30; 7-5-31 to 7-18-31; 7-17-32 to 7-30-32; 3-10-33 to 6-14-33; 7-14-35 to 7-27-35; 8-23-36 to 9-5-36; 8-8-37 to 8-21-37; 8-7-38 to 8-20-38; 7-9-39 to 7-22-39. END

By Command of Major General GRANT:

(Signed) EDWIN O. SHAW
Edwin O. Shaw,
Capt., Inf.

Actg. Asst. Adjutant General

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**APPENDIX TO SUPPLEMENTAL BRIEF FOR
APPELLANTS C. W. RIDINGER, SR. AND
WARREN I. BICKFORD**

(Filed Jan. 16, 1942)

APPENDIX.

[405] CHARLES W. RIDINGER, SR., one of the defendants, produced on behalf of plaintiffs, having been duly sworn, testified as follows:

Mr. Eckert:

Q. Mr. Ridinger, do you claim your constitutional privilege against producing any evidence here or against incriminating yourself?

A. I do.

Mr. Margiotti:

Q. Mr. Ridinger, are you connected with any of the corporations named in this complaint?

A. We bid on two jobs.

Mr. Eckert: I move that be stricken out, as not responsive.

The Court: He may not know who are named in the complaint,—

A. Iron City Engineering Company.

Q. In what capacity are you connected with the Iron City Engineering Company?

A. President.

Q. You have been subpoenaed to produce any papers that you may have that relate to any of these jobs mentioned in the complaint?

A. Yes.

Q. Do you have those papers with you?

A. Yes. (Witness producing papers) I might state we did not have any PWA jobs.

Q. I understand. What papers have you brought?

A. North Side Market—

Q. What else?

A. And Airport. (Witness hands papers to counsel for plaintiffs).

[406] Q. What is the bundle of papers contained in the envelope marked "North Side Market"?

Appendix.

A. That (indicating) is the estimate that was made up on the first bid on the North Side Market.

Q. And what are the papers that you have produced in connection with the Airport?

A. That (indicating) is the estimate sheet that was made up on the first bidding on the Airport.

(Two groups of papers marked respectively Plaintiffs' Exhibits Nos. 302 and 303).

Q. Will you state whether or not, in connection with Plaintiffs' Exhibit 302, which is the estimate in connection with the North Side Market—you have a copy of the bid that was submitted?

A. No; this is the only thing we have—the only records we have (indicating Exhibit 302).

Q. Well, is there anything here that reflects the bid that was made?

A. Those are estimates from the different manufacturers on the items on the bid.

Q. In other words, is this first part your base bid?

A. Yes.

Q. That is the base bid. And does that answer apply to Plaintiffs' Exhibit 303?

A. Yes.

Q. That is on the Comfort Station—

A. No, it is the Airport.

Q. I beg your pardon; that is right, on the Airport. Will you state whether or not there is anything in this file, any paper in this file, showing the bid that was actually submitted to Allegheny County, or to the authority involved in the North Side Market?

A. All that there is the total there of the bid.

Q. Well, is this a base bid (indicating), or is this the bid that went in to the authority?

A. That is the bid that went in to the County.

Q. And does that same answer apply on Plaintiffs' Exhibit 302?

A. Yes. I might say that I have not been active in this business for about twenty years, and I am not very familiar with these figures. I just had to take what was in the file.

Q. Very well. Does your file contain any statement from the Electrical Contractors Association giving to you the bid to be submitted to the sponsor?

A. It does not; there is nothing of that kind.

[407] Q. Nothing of that kind. Has it had any such thing as that in the file?

A. No.

Q. Or in the possession of any officer?

A. Never.

Q. And this is your complete file on that subject?

A. Yes.

Q. On both subjects—pardon me. That is all for the present. Will you produce your checks and stubs, and also your ledger, showing your dues paid to the Electrical Contractors Association?

A. We having had no PWA contracts, we paid no dues to the Association on PWA work.

Q. Well, produce those checks anyhow, and then we will decide on the other one.

A. If we have them. I might explain here—

Q. Did you pay them? Did you pay dues?

Mr. Eckert: I object to this, as beyond Your Honor's ruling. The witness was only to produce records, not to testify.

Mr. Margiotti: That is right.

Q. You produce the checks and the ledger.

A. I might state further—

Q. Never mind; you just produce the checks showing dues paid to the Contractors Association, and the books and records.

(No cross examination).

• • • • •

ROBERT C. CARMACK (DIRECT EXAMINATION).

[409] *Mr. Margiotti:*

Q. Mr. Carmack, I want to ascertain from you for each defendant who acted for each particular individual or corporation in carrying out the bid plan which you have testified to on the jobs that were handled through the Association, or attempted to be handled through the Association. The company of Hess and Barton—

Mr. Eckert: If the Court please, this is asking for an opinion on the part of the witness, I submit. All the witness could tell would be the specific facts of what each person did.

Mr. Margiotti: If Your Honor please, what I have in mind is this: there is a question about whether corporations are liable in this case. I personally think they are, because it is a civil case, but that being in question I want to make certain the particular individuals named in this complaint were the persons who acted, were the prime movers for the corporation, and signed the papers; otherwise I would have to take all of these reports and so forth and commence to introduce them for that purpose. If we can reach some agreement on that—I don't think there is any question about who represented each particular group, who acted for them. It is coming out in the evidence pretty generally, but I want to get it settled once and for all, so we don't have to refer to it again. I would like to get it handled that way, but otherwise I can take each specific case, and every time Hess and Barton is mentioned can say who represented them.

Mr. Eckert: This is asking for an opinion. It isn't stating a specific fact.

Mr. Margiotti: It is a fact. He knows who came in there and acted for each person.

The Court: I suppose you would have to ask what each particular individual defendant did in relation to the Association. In a measure, the question as you propounded it is partly a question of fact, but still it calls for a conclusion of this witness.

Q. Mr. Carmack, I will take each one of the defendants. Will you state by whom was Hess and Barton represented at the meetings?

Mr. Eckert: If Your Honor please, that certainly is the same question, and subject to the same legal objection.

Mr. Margiotti: That is certainly a question of fact—who represented Hess and Barton. It appears in the minutes "Hess and Barton present." The corporation wasn't there. You don't expect the seal of the corporation to be there. Who was there?

The Court: What do the minutes show?

Mr. Margiotti: It just gives the name of the corporation time and time again.

[410] Q. Isn't that right?

A. Not always.

Mr. Margiotti: I will withdraw that question.

Q. Will you state what part, if any, William F. Hess played in connection with the business of Barton and Hess which was carried out through you through the plans which you have mentioned?

Mr. Strassburger: That is objected to for the same reason.

Mr. Margiotti: I will change the form of that question.

Q. What, if anything, did William F. Hess have to do in any of the business of Barton and Hess carried on through the Association by means of the bid plan or plans which you have referred to?

A. Mr. Hess was the man that I always—or rather, who contacted me on the bidding plan.

Q. Of who?

A. Of Hess and Barton. Mr. Barton attended some meetings or golf games or parties or something of that sort; but as far as the business was concerned, Mr. W. F. Hess contacted me on that.

Q. And the same question with reference to Edward B. Sargent and the Sargent Electric Company.

Mr. Strassburger: That is objected to. Who acted for the Sargent Electric Company? Putting them together that way, Mr. Margiotti is suggesting the answer.

Mr. Margiotti: I am taking the same question and mentioning Sargent and the Sargent Electric Company.

Mr. Strassburger: He shouldn't suggest who represented the corporate defendant.

Mr. Margiotti: I am not suggesting it.

Q. What, if anything, did Edward B. Sargent have to do with the submission of bids or the carrying out of the plan or plans on bidding in those cases where Sargent Electric Company appeared?

Mr. Strassburger: Are you assuming Sargent Electric Company is a corporation?

Mr. Margiotti: I am not assuming anything. I am stating it as it appears in the books—Sargent Electric Company. He is the owner. I know that.

A. Sargent was the principal contact man in this case. He has a man in the office by the name of Weisman who, in a couple of instances, came in and contacted while Mr. Sargent was out of the city.

Q. What was Mr. Weisman's first name?

A. I couldn't say. I should know, but I have forgotten.

Q. Now, the same question with reference to R. N. Morris and the Morris Engineering Company.

A. R. N. Morris owned it.

[411] Q. And your answer is the same as to Morris

with reference to that company as it has been with reference to the other two?

A. That is right.

Q. The same question with reference to John R. Williams and the Lord Electric Company of New York City.

Mr. Strassburger: The point is, he is suggesting Mr. Williams represented the Lord Electric. I think he did, as a matter of fact, and I am not objecting in that case for that reason, but I don't see why he should suggest who acted for the particular company. Let him ask who represented it.

Mr. Margiotti: I object to your statement that I am making suggestions to this witness. I am asking him what, if anything, he had to do with the Lord Electric Company. You have admitted in the statement he was the vice president of the Lord Electric Company. There is no suggestion.

The Court: I think the question is correct. We overrule the objection.

A. J. R. Williams was the contact man.

Q. Walter F. Weberg and J. R. Walters in connection with the Fort Pitt Electric Company.

A. Walter Weberg in most cases, and in a couple of instances Joe Walters.

Q. Thomas G. Hodgdon and Thomas G. Hodgdon, Jr. in connection with the Franklin Electric and Construction Company.

A. Both have contacted my office.

Q. Benjamin Raphael and Israel Raphael in connection with the Raphael Electric Company.

A. Both.

Q. C. W. Ridinger, Sr. and Warren I. Bickford and C. W. Ridinger, Jr. in connection with the Iron City Engineering Company.

A. Junior Ridinger in most all cases. I can't recall of the Senior ever being in the office. I recall of a meet-

ing in the hotel where Mr. Bickford was present, and that is the answer to that.

(A short recess was taken at this point)

Q. Mr. Carmack, I believe we were discussing the names of C. W. Ridinger, Sr., Warren I. Bickford, and C. W. Ridinger, Jr. in connection with the Iron City Engineering Company.

Mr. Margiotti: As I recall, Your Honor, paragraph 4, referring to the various names and their connections with these companies, I believe was admitted. If it wasn't, I will have to establish a relationship in each company. What I have in mind particularly to do—for instance, as we have set forth the respective positions of the parties, Warren I. Bickford was and is Secretary and Treasurer.

[412] The Court: The allegations of fact contained in paragraph No. 4 of the complaint are admitted.

Q. We have been discussing these three names in connection with the Iron City Engineering Company. I believe you said something about generally it was Ridinger, Jr. Did you complete your answer on that? Did Mr. Ridinger, Sr. attend any meetings at all?

A. Mr. Ridinger was never in my office.

Q. Will you state generally or not whether you know, whether there were any facts from which you can determine whether Mr. Ridinger, Sr. had knowledge of the plan?

Mr. Strassburger: Objected to.

The Court: We sustain the objection.

Q. Was Mr. Ridinger present at any meetings where the plan was discussed?

Mr. Strassburger: We object to that. He said he was never in his office.

Mr. Margiotti: I am talking about meetings. Meetings can be anywhere besides his office.

Mr. Eckert: I object to that as leading, too, Your Honor.

The Court: It can be asked whether C. W. Ridinger was ever present at a meeting any place else.

Mr. Strassburger: At which he was present.

Mr. Margiotti: Which the witness knows about, whether he was present or not.

The Court: No.

Mr. Margiotti: Supposing Mr. Ridinger told him, wouldn't that be evidence?

A. I don't recall of Mr. Ridinger, Sr. ever being present.

Q. Did you ever have any discussion with Mr. Ridinger concerning the plan?

Mr. Strassburger: I object to that as cross examining his own witness. He said definitely Mr. Ridinger was not there. Now he is trying to cross examine his own witness to develop that the answer is not correct.

Mr. Margiotti: You don't know the nature of the question. You don't appreciate it. I am trying to find out whether Mr. Ridinger had any knowledge of the plan.

Mr. Strassburger: I don't know how a man can have a discussion with a man if they never came together.

[413] *Mr. Margiotti:* He didn't say they never came together. He said he never came to his office.

The Court: Find out if he is acquainted with Mr. Ridinger, Sr.

Q. Are you acquainted with Mr. Ridinger, Sr.?

A. Very well.

Q. Have you ever had any discussion with Mr. Ridinger, Sr. concerning the plan?

A. No.

CROSS EXAMINATION.

Mr. Eckert:

[2164] Q. Well, now, did you testify in September, 1939 as follows—page 57:

[2166] Q. Is the Iron City Engineering Company in that bracket?

A. They are in that bracket but they don't ever seem to be with us—they don't ever seem to be with that bracket. Don't know whether they attend the meetings or not.

[2167] [*Mr. Eckert*]:

Q. Did you so testify?

A. Yes.

Q. Well, isn't what you said then correct?

A. To my best knowledge and belief.

[480] JOSEPH C. HAINES, a witness produced on behalf of the defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Nicklas:

Q. You are Joseph C. Haines?

A. That is correct.

Q. Where do you live, Mr. Haines?

A. Pittsburgh.

Q. And with what company are you connected?

A. With the Westinghouse Electric Supply Company, or formerly the Iron City Electric Company.

Q. And were you with the Iron City Electric Company in 1938, October?

A. That is correct.

Q. What was your work there?

A. I was identified with the lighting department on sales work.

Q. And in connection with your duties in the lighting department, was it part of your work to study plans and specifications for furnishing lighting equipment to meet those plans and specifications?

A. That is correct.

CROSS EXAMINATION.

[482] *Mr. Margiotti:*

Q. Who is your present superior?

A. I mentioned that I was employed by Westinghouse Electric Supply Company; Mr. Bickford is the local district manager.

Q. Bickford? And he is one of the defendants in this case?

A. I read the papers, and—

Q. Well, just answer the question. Is he the same man?

[483] *Mr. Strassburger:* The record speaks for itself.

Q. Well, is it the same man? There are a lot of Mr. Bickfords, I assume.

A. Well, you are referring to Mr. Bickford who is a defendant?

Q. Well, is the defendant the same man who is your superior, your boss?

A. That is right.

Q. That is what I want to know. Is Mr. Ridinger, Senior, connected with your company?

A. Yes, Mr. Ridinger is at the company; he has been there continuously.

Q. Is he one of your superiors?

A. Yes, I suppose he is in a way.

Q. And were both of these men, Ridinger, Senior, and Mr. Bickford, your superiors in connection with the Iron City Electric Company?

A. That is right; Mr. Ridinger was president of the Iron City Electric Company.

Q. And at that time you folks were engaged in selling supplies to contractors?

A. That is right; we were one of the electrical supply companies over a period of years in the city of Pittsburgh.

.

RE-DIRECT EXAMINATION.

Mr. Eckert:

Q. Do you know how long Mr. Bickford and Mr. Ridinger have been managing the Westinghouse Electric Supply Company and before that the Iron City Electric Company, as it was called then?

[484] A. Well, the Westinghouse Electric Supply Company—or rather, it was known as the Westinghouse Electric Supply Company effective March—well, just two years ago.

Q. Well, did you listen to the question: I asked you as to both—not what the company is called now, but previously as the Iron City Electric Company.

A. Well, the Iron City Electric Company was in business some thirty years as an electric supply jobber.

Q. And were Mr. Bickford and Mr. Ridinger the active managers of that throughout its existence?

A. That is correct.

.

**SUPPLEMENTAL APPENDIX TO REPLY BRIEF FOR
APPELLANTS RIDINGER AND BICKFORD
Exhibit No. 721**

(Filed Feb. 27, 1942)

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SUPPLEMENTAL APPENDIX.

Exhibit No. 721.

TABVLATION OF

J. LAWRENCE HOPP • REGIST
J. 5th THIRD AVENUE • PITTSBUR

[illegible]

TABULATION OF BIDS

PLAINTIFFS EX. 721
2/9/41 H.F.

COUNTY HOME

WOODVILLE PENNSYLVANIA

J. LAWRENCE HOPP REGISTERED ARCHITECT
J. 5th THIRD AVENUE PITTSBURGH PENNSYLVANIA

APRIL 8 1935

PROJECT #1 Shop for copy, E.B.	PROJECT #2 Hospital Bldg.	PROJECT #3 Farm Colony Unit and Bldg.			PROJECT #4 Lowboy	PROJECT #5 Maid Bldg. Bldg.	PROJECT #6 Syndicate for Member/25 for Medical Staff					PROJECT #7 Maid Bldg. Bldg.				
		Shop for copy, E.B.	Bldg.	Unit and Bldg.			By A (1)	By B (1)	By C (1)	By D (1)	By E (1)					
62,700	132,000	147,000	144,100	311,100	30,000	44,200	13,200	12,300	24,100	24,100	72,700	24,000				
62,000	132,000	171,000	140,000	312,000	100,000	45,000	12,000	12,000	24,000	24,000	72,000	24,000				
71,017	142,775	193,340	167,799	341,132	117,019	47,000	13,477	12,201	27,600	27,600	84,161	24,511				
9,454	23,000	22,372	14,700	32,190	24,440	4,240	1,304	1,307	2,807	2,871	11,325	4,940				
9,341	24,000	24,784	14,277	32,040	21,900	2,140	1,379	1,480	2,738	2,845	8,419	24,300				
10,500	24,000	24,400	14,200	41,200	24,200	10,900	2,100	2,000	3,000	3,000	71,700	25,000				
9,577	25,000	24,700	12,400	40,000	25,000	2,240	1,701	1,697	3,351	3,472	10,221	45,400				
7,987	15,000	24,322	12,400	25,900	20,000	2,475	1,110	900	1,470	1,793	2,490	24,000				
4,000	14,000	21,900	12,100	25,130	22,400	2,970	1,193	1,033	1,960	1,900	4,000	25,100				
4,100	12,000	21,200	12,400	24,600	21,000	2,100	1,200	1,100	2,000	2,000	4,300	112,000				
3,000	12,000	21,000	20,000	22,000	22,000	4,000	1,100	1,015	1,900	1,900	4,000	109,000				
4,000	12,000	19,400	2,200	19,200	12,277	2,225	700	600	1,200	1,000	2,777	299,977				
4,100	2,100	14,900	14,000	21,000	12,000	2,000	600	610	1,200	1,000	2,500	330,300				
4,200	2,200	14,100	2,400	20,000	12,000	2,400	600	710	1,200	1,000	4,000	221,900				
4,500	2,400	12,000	2,400	22,477	14,200	2,200	770	770	1,000	1,100	4,000	230,200				
4,400	2,400	12,000	2,400	12,277	12,000	2,200	600	600	600	600	3,991	217,200				
4,600	2,700	12,400	4,900	21,000	12,000	2,200	600	600	600	600	2,500	222,200				

In The
UNITED STATES CIRCUIT COURT OF APPEALS
For the Third Circuit

No. 7841

United States of America, ex rel. Morris L. Marcus, etc.,
 vs.
 William F. Hess, et al.,
Appellants.

Before Maris and Goodrich, Circuit Judges.

Upon consideration of the petition of Thurman Arnold, Assistant Attorney General, filed February 12, 1942, it is ordered that the prayer of the said petition for leave to file a brief as amicus curiae on behalf of the United States in the above entitled cause be, and the same is hereby granted.

It is further ordered that, the request of counsel for appellee to postpone the argument in this case in order to give them time to answer the said brief of the United States be granted, and that the argument of this case be set for Monday, March 2, 1942, and that all proceedings in the above entitled cause, by way of execution or otherwise, be stayed until the further order of this court.

ALBERT B. MARIS,
Circuit Judge.

February 13, 1942

Order granting Petition of the United States to File Brief as Amicus Curiae; Staying Proceedings, etc.

Received & Filed February 13, 1942

WM. P. ROWLAND, *Clerk.*

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In The
UNITED STATES CIRCUIT COURT OF APPEALS
For the Third Circuit

No. 7841

October Term, 1941

United States of America, ex rel. Morris L. Marcus, and
Morris L. Marcus in his own behalf,
Appellees,

vs.

William F. Hess, et al.,
Appellants.

And afterwards, to wit, the 2d day of March, 1942, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable William Clark, Honorable Charles Alvin Jones and Honorable Herbert F. Goodrich, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 23d day of March, 1942, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

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In The
UNITED STATES CIRCUIT COURT OF APPEALS
For the Third Circuit

No. 7841

October Term, 1941

United States of America ex rel. Morris L. Marcus, and
Morris L. Marcus in his own behalf,
Appellees,

vs.

William F. Hess, et al.,
Appellants.

*Appeal from the Judgment of the District Court of the
United States for the Western District of Pennsylvania.*

OPINION

(Filed March 23, 1942)

Before CLARK, JONES and GOODRICH, *Circuit Judges*

CLARK, *Circuit Judge*

We share appellees' righteous indignation at the conduct of the appellants. In fact their own counsel made no attempt in his argument to us to justify that conduct. We cannot, however, share appellees' views of the applicable statute. The facts are not in dispute and may be simply stated. Federal funds were granted under the Public

Works Administration to local municipalities and school districts in Allegheny County, Pennsylvania to be expended in public-works projects. The appellants, the officers and members of the Electrical Contractors Association of Pittsburgh, conspired to rig the bidding on these projects. The pattern of the collusion was the informal and private averaging of the prospective bid which might have been submitted by each appellant. An appellant chosen by the others would then submit a bid for the averaged amount and the others all submitted higher estimates. The government was thereby defrauded in that it was compelled to contribute more for the electric work on the projects than it would have been required to pay had there been free competition in the open market. A verdict against the appellants was had in the sum of \$315,100.91, which consisted of \$203,100.91 damages (being double the actual damages found by the jury) and \$112,000 penalties (\$2,000 penalty for each violation of the statute). The defendants' motions for a new trial and judgment non obstante veredicto were refused. These motions were on various grounds. The learned District Judge discussed principally two: the scope of the pertinent statute and the question of double jeopardy. As we think he erred as to the first, it is unnecessary to pass on the others. We may say that we have already given some consideration to the question of civil sanctions and double jeopardy.¹

The plaintiff-appellee is an informer. In other words he is the "any person" referred to in the statute.² The fact

¹ *Mauch v. Commr.*, 113 F. (2d) 555.

² "Any person not in the military or naval forces of the United States or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight Title 'CRIMES' shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit." R.S. §3490.

that he is manifestly any person does not completely solve his difficulty. He must also establish the relevancy of the statute. In terms it reads:

"Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any *claim* upon or against the Government of the United States, or any department or officer thereof, knowing such *claim* to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such *claim*, makes, uses or causes to be made or used, any false bill, receipt, voucher, roll, account, *claim*, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent *claim*." Revised Statutes §5438 (*italics ours*).

In a companion section of the Revised Statutes³ some of the present functions of the Department of Justice were delegated to the people at large. Private persons were empowered to prosecute frauds against the United States through informer actions.⁴ Thus any person may sue another who commits "any of the acts prohibited by any of

³ " . . . Such suit may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent."

R.S. §3491.

⁴ These provisions were derived from the Act of March 2, 1863, 12 Stat. 606, Chapter 67, repealed by R.S. §5596. For general discussions on these actions see 23 Am. Jur., Forfeitures and Penalties §61; 25 C.J., Fines, Forfeitures and Penalties §84.

the provisions of section fifty-four hundred and thirty-eight."⁵ Section 5438 was repealed in 1909.⁶ Since the amendments to its successor⁷ were not incorporated into the provision creating liability in informer actions, these amendments may not be invoked in qui tam suits.⁸

Qui tam actions have always been regarded with disfavor:

"It is wrong for a free country to allow an informer to seek redress for his own pecuniary advantage in respect of a public wrong in which he has no direct personal interest or concern. A wrong to the State should surely be atoned for by a penalty payable to the State alone. . . . The origin of the practice whereby private persons can exploit the wrongs of others goes back into English history. Penal actions of this sort arose generally because men doubted whether the eyes of the primitive State were sufficiently watchful and its arm sufficiently long to discover and punish offenders. In a few cases of later date the legislature may have distrusted the zeal of the executive. . . .

"The golden age of the informer was the Tudor period. In Sir William Holdsworth's *History of English Law*⁹ reference is made to the long line of sixteenth-century statutes in which the common informer was given the penalties recovered by his energy, and collu-

⁵ R.S. §3490.

⁶ Section 341 of the Act of March 4, 1909, c. 321, known as The Criminal Code of 1909, 35 Stat. 1095, 1153, 1159. An amendment to R.S. §5438 by the Act of May 30, 1908, c. 235, 35 Stat. 555 is not material to this case.

⁷ Section 35 of The Criminal Code of 1909 as amended by Act of October 23, 1918, c. 194, 40 Stat. 1015 constitutes 18 U.S.C.A. §§80 and 83. Further amendments made by Act of June 18, 1934, c. 587, 48 Stat. 996 and Act of April 4, 1938, c. 69, 52 Stat. 197.

⁸ *Olson v. Mellon*, 4 F.Supp. 947, aff'd sub nomine *U.S. ex rel. Knight v. Mellon*, 71 F. (2d) 1021; *U.S. ex rel. Kessler v. Mercur Corp.*, 13 F.Supp. 742, 743 aff'd 83 F. (2d) 178.

⁹ Volume IV, pages 355 et seq.

sive proceedings by friends of culprits were treated as 'covinous' and therefore no bar against a genuine informer's suit. The system gradually provoked resentment among the many who were 'unjustly vexed and disquieted by common informers' and this class found a powerful champion in the great Sir Edward Coke. In his *Third Institute of the Laws of England* he describes informers as '*turbidum hominum genus*', and as ranking among the 'viperous vermin who endeavoured to have eaten out the sides of the church and commonwealth'. By their diligence in setting penal actions on foot they impoverish 'chiefly the poorer sort for malice and private ends'. Coke's influence caused a marked decline in the statutory recognition and encouragement of common informers. Probably the Crown recognized that it paid better to take the penalty for itself. Coke expressed this view in more dignified words: 'The King cannot commit the sword of his justice or the oil of his mercy concerning any penal statute to any subject.'

Hurst, *The Common Informer*, 147 *Contemporary Review* 189, 190.

That dislike has been implemented in court decisions for informer statutes have been construed with utmost strictness. Informers wishing to recover under them must adhere to the exact language of the statute.¹⁰

The statutory language here important authorizes recovery only where the defendants presented a "claim upon or against the government of the United States or any department or officer thereof."¹¹ Plaintiff would have us believe that the statutory words "presents . . . a claim upon or against" are synonymous with "commits a fraud upon". This argument is refuted both by legislative history and by

¹⁰ *Ferrett v. Atwell*, 8 Fed. Cas. No. 4747. Cf. *U.S. v. Kansas Pac. Ry. Co.*, 26 Fed. Cas. No. 15,506; *U.S. v. Shapleigh*, 54 Fed. 126.

¹¹ R.S. §5438.

grammar. The Senator in charge of the bill said in introducing it:

"This bill has been prepared at the urgent solicitation of the officers who are connected with the administration of the War Department and the Treasury Department. The country, as we know has been full of complaints respecting the frauds and corruptions practiced in obtaining pay from the Government during the present war; and it is said, and earnestly urged upon our attention, that further legislation is pressingly necessary to prevent this great evil. . ."

The Congressional Globe, 37th Cong., 3d Sess., Dec. 1, 1862—March 9, 1863, at p. 952.

That the Honorable Senator from Michigan was guilty of no overstatement is apparent from the histories of the times:

"The government was cheated without conscience in its purchases of military supplies. A committee of the War Department in 1862 exposed frauds of \$17,000,000 in contracts amounting to \$50,000,000.¹² The Michigan legislature formally charged that 'traitors in the disguise of patriots have plundered our treasury', and James Russell Lowell, agreeing, asserted, 'Men have striven to make the blood of our martyrs the seed of wealth.' The term, 'Shoddy aristocracy', came to signify those who reaped fortunes out of government con-

¹² The report of this committee says:

"He cannot be looked upon as a good citizen, entitled to favorable consideration of his claim, who seeks to augment the vast burdens, daily increasing, that are to weigh on the future industry of the country, by demands upon the treasury for which nothing has been rendered. . . Worse than traitors in arms are the men who pretend loyalty to the flag, feast and fatten on the misfortunes of the nation, while patriot blood is crimsoning the plains of the South and bodies of their countrymen are moldering in the dust."

Report of the House Committee on Government Contracts, March 3, 1863.

tracts, particularly from supplying the soldiers with inferior clothing."

Hockett, *Political and Social Growth of the American People 1492-1865*, 759.¹³

"Necessity, haste and carelessness can explain the acceptance of a great many of these contracts and a very great deal of inferior goods. But a large amount of blame must go to a horde of government-paid officials who, either through criminal negligence or criminal collusion, permitted or encouraged this robbing of the government treasury and cruelty to the American soldier Accused inspectors passed the blame on to those letting the contracts, the latter blamed the contractors, and the contractors in turn contended that they furnished goods according to specification. . . . Such wide publicity was gained by this complicity of public officials in the early contracting business that one of the very first acts of the extra session of Congress in 1861 was to institute an investigation of the existing practices and conditions. . . . The committee discovered an astounding amount of illegal and fraudulent activities, in some instances calling into question the honor or good judgment of men high in political and military councils of the country."

1 Shannon, *Organization and Administration of the Union Army*, 56-58.¹⁴

To the word "claim" has been attributed several legal meanings. It is used as an equivalent for "cause of ac-

¹³ For an account of the frauds in "bounty-jumping" and "pension-grabbing" see Hockett, *supra* at 733 and Schlesinger, *Political and Social Growth of the American People 1865-1940*, p. 111.

¹⁴ One enterpriser bought defective rifles from the government for \$17,486 and immediately resold them to a different quartermaster for \$109,912. See Josephson, *The Robber Barons*, 61.

tion",¹⁵ "debt",¹⁶ "demand",¹⁷ "existing right"¹⁸ and "unadjudicated obligation".¹⁹ Through them all however runs the sense of something owing from one party to another. The statement of the facts upon which that obligation is asserted to depend is of course false, but if true would spell out something like an action of assumpsit or debt. It is something quite different to rely on facts which never could give rise to a promise, express or implied, to pay however amply they demonstrate a cheat. The authorities cited by the plaintiff were all cases decided under statutes which used such phrases as "for the purpose of defrauding the United States"²⁰ and "to defraud the United States".²¹

The plaintiff seeks to come within the statutory words by stressing the fact that the periodical estimates for partial and final payment were presented to an officer of the P.W.A. This fact does not surmount the requirement that the claim must be one "against the United States Government or a

¹⁵ *Foust v. Munson S.S. Lines*, 299 U.S. 77.

¹⁶ *Holden v. Stratton*, 191 U.S. 115; *Coats v. Arthur*, 5 S.D. 274, 58 N.W. 675.

¹⁷ *U.S. v. Rhodes*, 30 Fed. 431; *In re Heim's Estate*, 166 Misc. 931, 3 N.Y.S. (2d) 134.

¹⁸ *Supera v. Moreland Sales Corp.*, 82 P. (2d) 963.

¹⁹ *In re Frank's Estate*, 154 Misc. 472, 277 N.Y.S. 573.

²⁰ Criminal Code §28, 18 U.S.C.A. §72 (*Madden v. U.S.*, 80 F. (2d) 672; Criminal Code §35, 18 U.S.C.A. §§80-86 (*U.S. v. Kapp*, 302 U.S. 214).

²¹ Criminal Code §37, 18 U.S.C.A. §88 (*U.S. v. Carlin*, 259 Fed. 904; *Belvin v. U.S.*, 260 Fed. 455; *Langer v. U.S.*, 76 F. (2d) 817; *U.S. v. Harding*, 81 F. (2d) 563). *U.S. v. Bowman*, 260 U.S. 94; *U.S. v. Mellon*, 96 F. (2d) 462; *U.S. v. Greenbaum & Sons*, 123 F. (2d) 770 and *U.S. v. Schor*, 13 F. Supp. 359 were brought under a portion of Section 35 of the Criminal Code which provides: "Make . . . any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States." *Kay v. U.S.*, 303 U.S. 1 concerned a prosecution under 12 U.S.C.A. §1467 which provides: "Whoever makes any statement, knowing it to be false, or whoever wilfully overvalues any security, for the purpose of influencing in any way the action of the Home Owner's Loan Corporation or the Board."

department or officer thereof." The question is not merely to whom is something presented, it is also what is presented. A claim against the United States means "a right to demand money from the United States." ²² The defendants at no time had such a right. The defendants' contracts were exclusively with the local municipalities. Neither the United States, of America nor any of its departments, officers or agencies was a party to said contracts. No promise was made by the United States Government nor any department or officer thereof to pay the defendants for their work. Nor was any specific fund prescribed by the defendants' contracts for their payment. Since the local municipalities were the only parties who promised to pay the defendants, the defendants could look solely to this source for payment. Where the local municipalities obtained the funds to pay the contractors was immaterial as between the contractors and the defendants. The claims of the defendants then were simply against the local municipalities. Since the defendants had no claim upon or against the United States, this action was not authorized by the informer statutes.

We wish to make it quite plain that our decision herein has no bearing whatever on ultimate restitution. In so far as the United States or the municipalities concerned have been defrauded, suit can be brought and the injured made completely whole. Furthermore, any defendants who are guilty can be punished by more than financial penalty—they can be sent to jail.

So much for the appellants—the United States as *amicus curiae* contends that the plaintiff was without statutory authority to prosecute this action. The government argues

²² *Hobbs v. McLean*, 117 U.S. 567, 575; 7 Words & Phrases 392. See also *U.S. ex rel. Kessler v. Mercur Corp.*, 13 F.Supp. 742, 743, *aff'd*, 83 F. (2d) 178, 181, *cert. denied* 299 U.S. 576; *U.S. ex rel. Saliman v. Salant & Salant*, 41 F.Supp. 196; *U.S. ex rel. Gilchrist v. American Cotton Cooperative Ass'n et al.* (E. 58-272 S.D. N.Y.) (unreported); *Et. U.S. v. Cohn*, 270 U.S. 339, 345-346; *Mookini v. U.S.*, 95 F. (2d) 960, 961.

that the right of an informer to sue under Section 3491 of the Revised Statutes has been repealed by subsequent congressional enactment. The repeal is alleged to have impliedly occurred as a result of the Reorganization Act of 1933.²³ This Act declares its purpose to be the reduction of governmental expenditures and the increase of governmental efficiency. It of course makes no reference to informer actions. By its provisions the President is empowered to regroup and transfer the functions of any executive agency. Pursuant to his authority the President promulgated an order which reads part:

"The functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the Government of the United States, and of defending claims and demands against the Government, and of supervising the work of the United States attorneys, marshals and clerks in connection therewith, *now exercised by any agency or officer*, are transferred to the Department of Justice."

Executive Order No. 6166, Section 5, June 10, 1933
(italics ours).

The government contends that the foregoing order confers upon the Department of Justice the duty of prosecuting all claims on behalf of the United States. If this interpretation is accepted, the executive order conflicts with Section 3490 of the Revised Statutes under which the present action was instituted. Since Section 3490 was enacted seventy years prior to the order, it is contended that the earlier statute has been impliedly repealed. A declaration of implied repeal, however, is not a matter which a court will undertake lightly. Courts have never looked upon implied repeals with favor.²⁴ The presumption is always against

²³ Act of March 3, 1933, c. 212, Section 16; 47 Stat. 1517.

²⁴ U.S. v. Note, 268 U.S. 613; U.S. v. Greathouse, 166 U.S. 601; In re Martin, 75 F. (2d) 618.

the intention of the legislature to repeal by implication.²⁵ An English authority has summarized the rule thusly:

"Repeal by implication is never to be favoured; and when the repeal is not express, the burden is on those who assert that there is an implied repeal to show that the two statutes cannot stand together."

Beal, Cardinal Rules of Legal Interpretation 525.

And our American writers say:

"Repeals by implication are not favored. This means that it is the duty of the court to so construe the acts, if possible, that both shall be operative. . . . One statute is not repugnant to another unless they relate to the same subject and are enacted for the same purpose. . . . When there is a difference in the whole purview of two statutes apparently relating to the same subject, the former is not repealed."

Sutherland and, Statutes & Statutory Construction §247.

"The inconsistency or repugnancy between two statutes necessary to supplant or repeal the earlier one, must be more than a mere difference in their terms and provisions. There must be what is often called 'such a positive repugnancy between the provisions of the old and the new statutes that they cannot be reconciled and made stand together.' In other words they must be absolutely repugnant, or irreconcilable."

Crawford, Statutory Construction §311.²⁶

Applying this test we find that the executive order is not at all repugnant to or irreconcilable with Revised Statute Section 3491. The subject matter of the presidential

²⁵ Bookbinder v. U.S., 287 Fed. 790.

²⁶ See also 59 C.J. Statutes §508; 25 R.C.L. Statutes §§168-171; Repeal or Amendment Implied From Later Inconsistent Enactment, 37 Columbia Law Review, 292.

decree is the transfer of functions within the executive agencies of the government. It does not by its terms encompass any claims which may be asserted by individuals for the government, as is done in informer actions brought under Revised Statute Section 3491. The words we italicized in the order quoted above make this clear. The order expressly provides that its application is limited to claims prosecuted by some governmental "agency or officer." "Agency or officer" as used in the order is obviously a shortened reference to and is synonymous with the words "executive agency or officer" in the authorizing statute. Plaintiff does not come within the statutory definition of an "executive agency" since it cannot be classified as a "commission, independent establishment, board, bureau, division, service, or office in the executive branch of the Government." Since the order neither relates to the same subject matter nor was enacted for the same purpose as Revised Statute Section 3491, the Government's thesis of implied repeal is without foundation. Nor is the government's argument bolstered by a reference to the Act of February 10, 1939 which provides:

"No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner authorizes or sanctions the proceedings and the Attorney General directs that the suit be commenced."

26 U.S.C.A. §3740.

This provision is a part of the Internal Revenue Code and relates only to those *qui tam* actions brought under the revenue laws.²⁷ It was derived from Revised Statute Section 3214²⁸ which existed side by side with the statute under

²⁷ See 26 U.S.C.A. §3745.

²⁸ Section 3213 of the Revised Statutes is the provision authorizing *qui tam* actions in enforcing revenue laws. By its context then section 3214 referred only to revenue enforcement actions.

which this action was begun.²⁰ The two sections of the Revised Statutes are consistent since one refers to informers actions under the revenue laws only and the other to all remaining informer actions. Each therefore is operative.

The judgment of the District Court is reversed and the cause remanded for further proceeding in accordance with this opinion.

A true copy:

Teste:

*Clerk of the United States Circuit Court of Appeals
for the Third Circuit.*

²⁰ See *Olson v. Mellon*, 4 F.Supp. 947.

In The
UNITED STATES CIRCUIT COURT OF APPEALS
For the Third Circuit

No. 7841

October Term, 1941

United States of America, ex rel. Morris L. Marcus, and
 Morris L. Marcus in his own behalf,
Appellees,

vs.

William F. Hess, et al.,
Appellants.

On appeal from the District Court of the United States,
 for the Western District of Pennsylvania.

This cause came on to be heard on the transcript of
 record from the District Court of the United States, for
 the Western District of Pennsylvania, and was argued by
 counsel.

On consideration whereof, it is now here ordered and
 adjudged by this Court that the judgment of the said Dis-
 trict Court in this case be, and the same is hereby reversed,
 with costs, and the cause is remanded to the said District
 Court for further proceeding in accordance with the opin-
 ion of this court.

WILLIAM CLARK,
Circuit Judge.

March 23, 1942.

Endorsements:

Order Reversing Judgment, etc.
 Received & Filed Mar. 23, 1942
 Wm. P. Rowland, *Clerk.*

In The
UNITED STATES CIRCUIT COURT OF APPEALS
For the Third Circuit

No. 7841

October Term, 1941

United States of America, ex rel. Morris L. Marcus, and
 Morris L. Marcus in his own behalf,
Appellees,

v.s.

William F. Hess, et al.,
Appellants.

ORDER AMENDING OPINION

Before CLARK, JONES and GOODRICH, *Circuit Judges.*

And now, to wit, March 26, 1942, it is ordered and directed that the printed opinion filed in the above entitled matter on March 23, 1942, be and the same is hereby amended as follows:

By striking out on page 2 the matter contained in footnote 2 and by substituting in lieu thereof the matter contained in footnote 3 on page 3;

By substituting the word "the" for "a" between the words "In" and "companion" in the first line of the body of the opinion immediately following the quotation on page 3, and by substituting for the matter in footnote 3 on page 3 the words "R.S. §3491";

By substituting "may" for "is" in the last line of the body of the opinion on page 7, and by inserting the word "be" after the words "of course" in that same line;

By correcting the spelling of the word "authorities" in the fourth line of the body of the opinion on page 8;

By substituting the words "local municipalities" for the word "contractors" in the ninth line from the top of the body of the opinion on page 9, and by inserting the word "in" between the words "reads" and "part" in the body of the opinion in the third line from the bottom of page 9;

And by striking out the word "and" in the body of the opinion in the third line from the top of page 11.

As hereinabove corrected and amended the opinion heretofore filed is reaffirmed, and approved.

By the Court,
WILLIAM CLARK,
Circuit Judge.

United States of America
Eastern District of Pennsylvania } *Sct.*
Third Judicial Circuit

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Appendices to the Briefs for Appellants, as constituting the portions of the record before this court at argument; and proceedings in this court in the case of United States, ex rel. Morris L. Marcus, etc., Appellees vs. William F. Hess, et al., Appellants, No. 7841, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 30th day of March in the year of our Lord one thousand nine hundred and forty-two, and of the Independence of the United States the one hundred and sixty-sixth.

WM. P. ROWLAND,
 Clerk of the U. S. Circuit Court
 of Appeals, Third Circuit.

(Seal)

IN THE
United States Circuit Court of Appeals
For the Third Circuit

No. 7841

UNITED STATES OF AMERICA, ex rel. MORRIS L. MARCUS, and MORRIS L. MARCUS in
His Own Behalf

WILLIAM F. HESS et al.,
Appellants.

APPELLEES' APPENDIX

*Appeal from the Judgment of the District Court of
the United States for the Western District of
Pennsylvania at No. 748 Civil Action.*

CHARLES J. MARGIOTTI,
MARGIOTTI, PUGLIESE & CASEY,
JOSEPH H. REICH,
JOSEPH A. ROSSI,
Attorneys for Appellees.

20 Grant Building,
Pittsburgh, Pennsylvania.

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John F. Laboon—Direct

1a

APPELLEES' APPENDIX

(Consisting of Pertinent Testimony Contained in Transcript
of Designated Portions of Trial)

(Note—References are to pages of Transcript of
Designated Portions of Trial)

JOHN F. LABOON

Direct Examination

(p. 8):

Q. Do you have any knowledge yourself as to the method of payment of the contract?

A. Yes, sir.

Q. What was that method?

A. We provided in our contracts—and we always do, as a matter of fact—for payment on the basis of monthly estimates—

Mr. Eckert:

Q. You are talking about the County's payments?

A. That is right. Under our arrangement, our resident engineer estimates the amount of work which the contractor has completed during the current period, whether that is a month or two weeks—it is usually a month, and so stipulated, the time is stipulated. In the case of PWA contracts, such as this one here under discussion, the Homestead High Level Bridge, the estimate of our resident engineer was submitted to the local official representing the PWA, who then approved it and it was placed in order for payment.

2a

John F. Laboon—Direct

(p. 9):

Q. You have stated that PWA approved your estimates before payments were made to the contractors. Is that right?

A. That is correct.

(p. 9):

Q. But in these cases, before payment was given on the estimates, before your estimates were given out to the contractor, you required his cooperation in submitting this affidavit, or whatever it was, with reference to the employment, the number of employees—

A. Payroll.

Q. And when necessary you also required him to give you bills and other information, in order to make out your estimates intelligently?

A. That is correct.

Q. And did that apply generally to all your contracts?

A. Yes, sir.

(p. 10):

Q. Now, you have stated that PWA approved your estimates before payment was made to the contractor. Did PWA approve anything else in connection with your electrical contracts?

A. They usually approved the plans and specifications.

Q. The plans and specifications that you gave out?

A. That is right. They were sent to Harrisburg, in the beginning, and usually came back with their approval and ready for advertising.

Q. That is the PWA office in Harrisburg?

A. That is right.

*John F. Laboon—Redirect
Pltff's Ex. No. 9*

Q. Maintained there by the Government?

A. That is right.

Q. And what else did they approve?

A. Well, preliminary—you mean—to letting the contract?

Q. Yes.

A. Well, then, of course they approved the contract documents and the bond, and checked those things..

Q. And would you let a contract without the approval of PWA?

A. No, sir. We would let a contract, but the contract could not be executed—let us put it that way. The Commissioners could, on my recommendation, for instance, award a contract subject to the approval of PWA, and then PWA would have the opportunity to approve or disapprove the low bidder, and it was then in order for final execution.

Redirect Examination

(pp. 24, 25):

Mr. Margiotti:

At this time we offer in evidence Plaintiff's Exhibit No. 9, being a photostatic copy of the notice of publication in the Homestead High Level Bridge. May I read this exhibit, Your Honor?

(Counsel for Plaintiff reads Exhibit 9, as follows:)

"COPY OF NOTICE OF PUBLICATION

"ALLEGHENY COUNTY DEPARTMENT OF WORKS

Pittsburgh, Pennsylvania,
February 2, 1937.

"Separate and sealed proposals will be received at the office of the County Controller of Allegheny

*John F. Laboon—Redirect
Plff's Ex. No. 9*

County, Pittsburgh, Pa., until 10:00 o'clock a. m., Eastern Standard Time, Thursday, February 25, 1937, and will be publicly opened and read one hour later by the Allegheny County Commissioners, for the following:

"Pittsburgh-Homestead High Level Bridge Electrical Contract, No. 206. This work to be done consists of furnishing and erection of the conduits for the bridge lighting and a system of navigation lights. The contract documents may be viewed at Room 502 County Office Building, Pittsburgh, Pa. Blueprint copies of the contract plans, copies of proposal documents and specifications may be obtained at the same place upon payment of \$2.00 per set. No refunds will be made. Each bidder is required to file with his proposal a certified check to the order of the County of Allegheny in the amount of ten per cent of his bid. Each bidder shall accompany his proposal with a list of plant and equipment, a performance record, and a statement of his financial condition, as required in 13-1 of the Instructions to Bidders. The project is being financed in part with funds furnished by the Federal Emergency Agency of Public Works, and the requirements of PWA Form 188, dated August 12, 1935, and the amendments thereto, together with all other requirements of the Federal Emergency Administration of Public Works, must be complied with. Attention of bidders is particularly called to the requirement of conditions of employment to be observed. The minimum wage rates which shall be paid on these contracts are as follows: Skilled labor \$1.20 per hour, semi-skilled and other classes of labor as called for in the contract documents."

• • • • •

A. H. Doering—Direct

5a

(p. 27):

Q. And when you testified before that after you had made your monthly estimates of the work done, and that had been checked by the PWA inspector on the job, that you then put the requisition through for payment. You mean payment by the County; is that right?

A. That is right.

Mr. Margiotti:

Q. But were those payments made, unless approved by PWA?

A. No, sir.

Q. Will you state whether or not the projects were supervised by PWA?

A. They were.

Q. Did they have their supervisors—their inspectors on the job?

A. Yes, sir.

A. H. DOERING

Direct Examination

(p. 33):

Q. Will you state whether the offers were all the same with reference to terms, or was there some difference in them?

A. They are all practically the same. I know of no case different outside of the Market House. I cannot qualify on the Market House.

Q. Now I notice—I will just take one example. I will take an offer dated June 24, 1938, from the Federal Emergency Administration of Public Works, and it says: "City of Pittsburgh, Pittsburgh, Allegheny County, Pennsylvania." The subject is "Terms and Conditions, P. W. A.

6a

M. M. Steen—Direct

Form No. 230 as amended to the date of the offer—" That is this printed form that is attached to the offer?

A. That is right.

Q. "—which are made part hereof. The United States of America hereby offers to aid in financing the construction of Field Houses and Comfort Stations, including necessary equipment therefor, herein called the Project, by making a grant to the City of Pittsburgh, Pennsylvania, herein called the Applicant, in the amount of forty-five per cent of the cost of the Project upon completion as determined by the Federal Emergency Administrator of Public Works, but not to exceed in any event the sum of \$82,965.00. By acceptance of this offer the Applicant covenants to begin work on the Project as early as possible, but in no event later than eight weeks from the date of this offer, and to complete such Project with all practical dispatch, and in any event within eight months from the commencement of the construction. United States of America, Federal Emergency Administrator of Public Works." Signed, "H. A. Gray, Assistant Administrator." That is the form of offer in each one of the cases?

A. That is right.

M. M. STEEN
Direct Examination

(pp. 40, 41):

Mr. Strassburger:

Q. Mr. Steen, what do you mean by the "Portion of Government Grant for Electrical Work"?

A. The Government grant was based upon an estimate of cost of the entire project, which had to be substantiated by individual detailed estimates of general work, heating and plumbing, and the electrical—

M. M. Steen—Direct

7a

Q. This allocation that is made on this schedule is your allocation and not the Government's?

A. No; the Government then sent us a recapitulation of the grant, and they said, for instance, so much money—we will say twenty-five thousand dollars or twenty-four thousand dollars—for electrical will be allowed in the grant; and forty-five per cent of that amount would be the actual grant money under that allocation of allowance.

(p. 45):

Q. And on the question of payment to the contractor, was that done upon estimates made to the School Board?

A. The contractor turned in estimates for payment, which were checked by our inspectors in the field, and were checked by the resident engineer inspector furnished by the Public Works Administration in the field also. When those were properly certified to as being correct, they then came in and passed under my signature finally, and were then sent over for payment.

Q. Then before there was any payment to any contractor, it was required that he furnish these estimates in writing?

A. Yes. The estimates were prepared on a special form that was for that purpose.

(p. 46):

Q. All right. Will you state whether or not an affidavit was required in connection with the contracts?

(p. 47):

Q. (Question read).

A. The affidavits were not required by the PWA. They sent forms of affidavit to us, and the provision was

that the owner, the sponsor of the project, could require them if he deemed fit, if he saw fit to.

(p. 60):

Q. Therefore the Government's grant to the School Board was forty-five per cent of the amount that you estimated and that they approved as the cost of the electrical work?

A. The amount that they approved as the cost of the electrical work on estimate basis, ~~not~~ the amount they approved on bid basis; but on estimate basis, it is true. May I explain that, to clarify everybody's mind on it? Suppose we estimated a job was going to cost \$24,000, and the Government might come along and say, "Well, we feel it will only cost twenty-three"—or "we think it will cost twenty-five"; they might change our estimate to some extent, but it is still an estimate. But whatever that estimate is, the grant forty-five per cent is based upon it, and not upon what you might spend. You might spend fifty thousand dollars for that job—or, to make it less ridiculous, thirty thousand, or run over six thousand. Then you wouldn't get forty-five per cent of the six thousand you ~~overran on~~ your estimate, you only get it on what they approve as the proper estimate.

(pp. 60, 61):

Q. And then the Government granted you forty-five per cent. of, your total estimated cost?

A. Yes; but they were very specific in saying we must have a detailed estimate of each of these branches,—not as to the recap of what the electrical cost is, but a detailed take-off of these branches, to indicate what these individual things were going to take; because they weren't going to give you forty-five per cent blind on a total, it

had to be substantiated with figures their engineers checked; and then they took our plans and specifications and they had engineers to check them to see whether they thought our estimates were proper or not. If they didn't think so, they changed it, and then they reallocated sums of money against those various divisions of the grant request, and finally came back and said on this basis of allotment or control estimate—they said, "Now, your grant is made up by using these sums of estimated moneys against individual items"; and that is the basis upon which the grant is controlled.

Q. But the grant was forty-five per cent of the total estimated cost. Isn't that right?

A. Yes, it was.

Q. And no specific sum was granted for electrical work or for plumbing work, or for any other division of the work. Isn't that right?

A. Only in so far as you would say a specific amount was estimated for that work, and it would follow that forty-five per cent of it would be grant upon that work; but they didn't state across from it so much grant, so much grant, and then add them all up; they did check us upon the final total cost.

(p. 61):

Q. And if, for example, the electrical work cost less than you originally estimated in applying for the grant, you could use what you had left over, you might say, above your estimate of the cost of electrical work from the Federal grant for the plumbing work or the construction of the building. Isn't that right?

A. You could, if they would permit you to. I would like to clarify one statement I just made, when I said that offer of grant was in terms of the whole thing, as one blanket offer. Of course, you realize that it says that this

10a

M. M. Steen—Redirect

is made in conformity with their Document No. 230, or whatever that is—

.

Redirect Examination

(p. 72):

Q. Will you state whether or not these contracts were submitted to the PWA for approval?

Mr. Eckert:

I object to that.

The Court:

We will overrule that objection.

A. They were approved by the PWA.

Q. How is that approval exhibited?

A. Well; they stamped the document and signed it by the Associate Director of the District.

Q. Will you please read the approval?

A. "Approval as to conformity with agreement between the applicant and the United States of America. G. Douglas Andrews, Associate Director Region No. 1."

Q. Now, at the time the bids were opened, will you state whether or not any representative of the Government was present?

(p. 73):

A. He was. They always have a representative present.

Q. And how about payments that are made on the estimates?

A. Well, you mean from the Government?

Q. Let me put it this way: does the Government approve your estimates?

A. For payment to the contractor, you mean?

Q. Yes.

M. M. Steen—Redirect

11a

A. Yes, they do. They bear the signature of the resident engineer inspector.

Q. Then, as I understood you this morning, that estimate is turned over to the contractor, and he gets his pay on it?

A. Yes, it is turned over to us.

Q. To you, and then to the contractor, and he gets his pay?

A. Yes.

Q. Now, on all of these jobs, will you state whether or not they were inspected by the Government—they had constant inspectors there?

A. The Government had constant inspection of the jobs, yes.

Q. And you did, too?

A. Oh, yes.

Q. On these jobs that were being constructed, was there a requirement with reference to designation of the job, so far as notices on the buildings are concerned, when they were being erected?

A. Yes.

Q. And is there a requirement in your contract with the Government that requires the applicant, and "applicant" is used with the term "owner"—synonymous with "owner"—to require the contractor to make certain reports to the Government?

Mr. Eckert:

I think the contract will speak for itself.

Mr. Margiotti:

I want to find out if he knows.

A. Yes, I think that is right.

Q. I call your attention to page 12, and I would like to have you read the provision with reference to signs on projects that are being constructed.

12a

Joseph J. Mitchell—Direct

A. "Signs.—The applicant will cause to be erected on the site of the project at points and in positions to be designated by the Administrator's representative or agent assigned to the inspection of the project, signs in such quantity and of such dimensions as will be designated by the State Director, which signs will bear the legend P. W. A. Federal Emergency Administration of Public Works"; a blank space for the description of the project, and the project number.

Q. Was that carried out on these eighteen projects? (p. 74):

A. It was.

Q. I want you to read the provision on contract construction reports, Section 17, same page.

A. "Construction Reports.—The applicant will require that there shall be submitted to it by each construction contractor and will, in turn, submit to the Administrator's authorized representative or agent, schedules of the costs and quantities of materials and of other items, and that such schedules shall be in such form and shall be supported as to correctness by such of the estimates upon which they are based as such representative or agent may require. The applicant will also require that there shall be submitted to it by each such contractor and will, in turn, submit as above stated, the following reports on forms to be supplied by the Government: (a) Detailed Estimate, and (b) Periodical Estimates for Partial Payment."

JOSEPH J. MITCHELL

Direct Examination

(p. 81):

Q. Will you state whether or not those estimates were approved by PWA?

Joseph J. Mitchell—Cross

13a

A. They were all approved by PWA before they were paid.

Q. Were they turned over to the contractor, and the contractor gets his pay on them?

A. Are the estimates turned over to him?

Q. Yes.

A. No. The estimates are turned over to the Controller of Allegheny County, and he pays the contractor, who receipts for the same.

Q. Who presents them to the Controller?

A. The Department of Public Works.

Mr. Eckert:

Q. Of the County?

A. Of the County, yes.

Mr. Margiotti:

Q. Will you state whether or not those estimates when they are prepared—whether they are submitted to the contractor?

A. Yes; the contractor signs them before he presents them to the Accounting Department of the Department of Public Works, and then from there they go to the County Commissioners, who also approve them for payment before they go to the Controller.

Cross Examination

(p. 83):

The Witness:

The reason I say that is because the PWA auditors—that is, the United States Government—make a separate audit every time they give us a percentage of the job. In other words, to begin with, they will make a first audit of ten per cent, and grant us ten

14a

Joseph J. Mitchell—Cross

per cent outright of the cost of the job; and then at a certain interval they will give us another fifteen per cent, and then another fifteen per cent, and—There is forty-five per cent involved, and the last ten per cent usually comes after the completion of the job, after all the estimates are paid. Now, when an estimate is paid it is shown right in the PWA audit, and, of course, we get ten per cent of that when the job is finished. In other words, any job—

(p. 84):

Q. Well, if you have submitted to the PWA a cost of \$100,000.00 on the whole project, you would have expected to get either \$45,000.00 or \$30,000.00, depending on whether it was a thirty per cent grant or forty-five per cent?

A. That is, if it cost \$100,000.00, yes.

Q. If the electrical work was \$10,000.00 as you estimated, you would get \$4500.00, wouldn't you?

A. You mean on that one item? Just on the electrical work, you mean?

Q. You wouldn't get any particular amount for the electrical work, would you? You would get it on the whole job.

A. Well, each of it is detailed. It is detailed into electrical work, or whatever was done on the job. It is detailed for engineering—that is, preliminary expense—and contracts, and damages that are paid.

Q. But did you get forty-five per cent of all the item of the work?

A. That is right, because when it is totaled up at the end of the estimate, you get forty-five per cent of whatever it represents. So if you break it down, you would break it down forty-five per cent to each item. So it wouldn't make any difference.

M. M. Steen—Direct

(p. 85):

Mr. Eckert:

Q. There is no allocation like that made by the Federal Government?

A. There is on their detailed estimates, yes. Their auditors make a detailed statement, and, of course, they put on there—as the job progresses, they give you whatever percentage they are giving at that time. In other words, it might be only ten per cent of the total amount of the electrical work done in a certain period, and the next time it will be fifteen per cent of it; but in the final analysis of it, it only amounts to forty-five per cent of the total cost. They work on a cost basis. They don't work on an estimated basis—providing your forty-five per cent is equal to the amount that they agree to furnish against that job.

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(p. 86):

pp. 206-209

M. M. STEEN recalled, testified as follows:

Direct Examination

(Letter marked Plaintiff's Exhibit No. 82)

Mr. Margiotti:

Q. Mr. Steen, I asked you to produce a letter of instruction from the Federal Emergency Administration of Public Works in connection with the affidavits. You have handed me Plaintiff's Exhibit 82. Is that the letter?

A. This is the letter, yes. There were letters in connection with different projects. This is in connection with the project 2017-F.

Q. Is that the first letter you received with reference to affidavits?

16a

M. M. Steen—Direct
Offer—Pliff's Ex. 82

A. There are two here—one October 28th, one on October 29th, and one November 9th—three.

Q. This is the one of October 28th?

A. That is correct.

Q. Which job does that refer to?

A. It is on 2017-F, West Liberty Elementary School.

Q. And attached to the letter were certain forms. Are these forms of the affidavit?

A. They are the forms of the affidavit that you read today.

Q. And who furnished you with those forms?

A. The Government. The PWA furnished those.

Mr. Margiotti:

We offer in evidence Plaintiff's Exhibit 82.

(Letter read to jury by Mr. Margiotti)

Q. And your instructions were similar as to Spring Garden School, Thaddeus Stevens School, and the Miller School?

A. That is correct. I think they were also on the South Vocational, but we haven't got the letter. We can't find the letter, but we have the affidavit.

Q. And the Thad. Stevens School is dated October 28, 1938, the Miller School October 29, 1938, and the Spring Garden School November 9, 1938. Is that right?

A. That is the date of those letters, yes.

Q. Were they received about that time?

A. Oh, yes. I believe they are stamped on there the date of their receipt. They may not be.

(p. 87):

Q. Now, you were to produce the minutes of the School Board showing the acceptance of the offer on the seven projects that you didn't produce minutes in. Do you have them?

A. Yes, I have.

Harry Hively—Direct

Q. Are they included in those three books?

A. They are.

Q. Among other things, of course.

A. Yes. Do you want me to read them?

Q. I don't think so. I think I will just show them to counsel, and they may admit these are correct, and we won't have to offer them.

(Informal discussion off the record)

Mr. Margiotti:

Are you satisfied that the minutes of the Board of Public Education of Pittsburgh show that offers were made by the Government in connection with PWA grants on the seven projects, copies of which minutes were not received this morning, and that the offers were accepted by the School Board, the offer and acceptance being similar to the ones that are already in evidence?

Q. Is that right, Mr. Steen?

A. That is correct, yes.

HARRY HIVELY

Direct Examination

(p. 100):

Q. May I ask one question before we produce these: Are the PWA funds which were received on these various projects so earmarked by the City, or are they kept in a separate account, or what?

A. They are kept in a separate account.

Q. And earmarked as such. Is that right?

A. That is right.

Q. I just happened to notice in all these you have "PWA".

18a

Harry Hively—Direct

(Short recess taken at this point).

Mr. Eckert:

If Your Honor please, to clear up what Mr. Margiotti asked the witness just before the recess, I would like to ask a couple of questions on that ground.

Mr. Margiotti:

Well, Mr. Eckert, I am not through on that. I am not through with the witness in chief, and I am going along on that question. Of course, it is up to the Court, whatever the Court suggests, but I would like to go on myself.

Mr. Eckert:

There were a couple of questions on these accounts; in other words, I think they are misleading, and I would like to have him clear it up.

(p. 101):

The Court:

We will let you do that.

Mr. Eckert:

Q. Mr. Hively, will you tell us from what fund these vouchers that you have produced here for the projects in question are actually paid?

A. This (indicating) is North Side Market, I don't know what exhibit number—

Q. I am not referring to that project alone, I mean all these projects.

A. Well, this particular North Side Market, we paid from two funds. That was the first grant we ever got from the Government, and we put their money in one bank account and put ours in the other, and we paid out of that from the Government and the City.

Q. And on the other projects, how did you handle them?

A. They were all paid out of the bond fund; originally they were all paid out of the bond fund.

Harry Hively—Direct

Q. Your vouchers were paid out of a City account in which it puts the proceeds of bond issues?

A. Yes, sir.

Q. And then would you put the funds from the PWA into that bond account to reimburse it later?

A. Yes, sir.

Q. On this North Side Market job I see you have "bond fund" marked on your slip.

Mr. Margiotti:

Are you through, Mr. Eckert?

Mr. Eckert:

Yes.

Mr. Margiotti:

Q. Mr. Hively, your contract with the Government has this provision: "5. Construction Account. A separate account or accounts, herein collectively referred to as the Construction Account, will be set up in a bank or banks which are members of the Federal Deposit Insurance Corporation. The advance grant payment, the intermediate grant payments, the proceeds from the sale of the bonds, exclusive of accrued interest, applicant's funds, the final grant payment, and any other money which shall be required in addition to the foregoing to pay the cost of constructing the project, will be deposited in the Construction Account promptly upon receipt thereof. All accrued interest paid by the Government at the time of the delivery of any bonds will be paid into a separate account, herein referred to as the Bond Fund. Payments for the construction of the project will be made only from the Construction Account." That is a part of the provision of your contract. I will let you see it (handing paper to witness),—maybe you are not familiar with this.

A. We followed that.

Q. You followed that provision?

A. Yes.

20a

Harry Hively—Direct

(p. 102):

Mr. Eckert:

If the Court please, I move to strike that out, as a conclusion on the part of this witness. He has stated the specific facts, that in all cases except the North Side Market they paid the vouchers out of the bond account and later reimbursed that out of funds received from the PWA. In the case of the North Side Market they deposited their funds in two different accounts and paid checks out of those two different accounts, that is, some checks out of the one account and some out of the other. Those are the specific facts.

Mr. Margiotti:

Well, I object to the witness's answer being stricken out. I am going further with the witness on that question, and perhaps you might withhold your request until I am through.

Mr. Eckert:

We move to strike out the answer, as a conclusion on the part of the witness. The specific facts are all that are evidentiary.

The Court:

It looks to me as though that is a fact answer. The better practice would have been to ask him to describe how the payments were accomplished.

Mr. Margiotti:

All right, Your Honor; I will ask him that question.

Q. Do you have—do you maintain a construction account?

A. Yes, sir.

Mr. Eckert:

Pardon me. Did the Court rule on our motion?

The Court:

I decline to strike.

Harry Hively—Direct

21a

Q. Do you maintain a construction account?

A. Yes, sir.

Q. And what goes into the construction account?

A. The proceeds from the bonds that we sold and the Government money that they turned over to us.

Q. In selling bonds, did you sell bonds for the entire cost of a project, or for fifty-five per cent of it?

Mr. Strassburger:

If he knows.

Q. (Continuing) Of course. Don't answer, if you don't know; just say, "I don't know".

A. We sold bonds in the amount of eight million dollars, which we say was our fifty-five per cent; and then we called on the Government as the work progressed to get their forty-five per cent in.

Q. I see. So that this fund consisted then of money you got from the sale of bonds and the money you got from the Government. Your bond money was fifty-five per cent, and the Government's money was forty-five?

A. We didn't get the forty-five per cent yet; we were getting it gradually.

(p. 103):

Q. As you got it, anyhow, it went into that fund?

A. Yes.

Q. And these payments were made out of that fund?

A. Yes, sir, out of the bond fund.

Q. You call that the bond fund?

A. The bond fund construction account.

Q. Were there any other payments made out of this fund, the bond fund or construction account, as you call it, except for PWA projects?

A. No.

Q. Was there a bank used in connection with this account, or was it maintained by the City? Was there a bank used?

22a

Harry Hively—Direct

A. We put the Government money in one bank and put our money in another bank.

Q. And did you do that in all those cases?

A. All these cases.

Q. So that you kept the Government's money separate and apart even from the bond money?

A. We drew the warrants or checks on the bond fund.

Q. Yes?

A. Then we would apportion the certain amount that should be paid out of the Government fund and wrote out a check and got the money out of the Government fund and transferred it back into our fund for their share.

Q. But you kept the Government's money—

A. Separate.

Q. (Continuing) —separate and apart from your own funds?

A. Up until the time we started to spend it.

Q. And then when you had to spend it, you spent it as you were required to under the conditions laid down by the PWA?

Mr. Eckert:

Objected to, as calling for a conclusion and leading.

Mr. Margiotti:

All right. I withdraw it; I think it is both.

Q. When would you draw out of the Federal account?

A. Every fifteen days.

Q. And what would you draw?

A. We would draw a check on the Government money.

(p. 104):

Q. For what?

A. For part of these costs that had been going on, that we had originally paid from our fund.

Harry Hively—Direct

Q. Were those payments approved before they were made?

A. Yes, sir.

Q. By whom?

A. By the Government, by the Department of Public Works, by the Controller.

Mr. Margiotti:

Q. Will you state whether or not you were permitted to withdraw the money that you had in a separate account in which you kept the Federal aid money—call it that—with-out the approval of the Government in some form?

A. We drew it out first without their approval, but they would come along later and audit it and see if it was all right, and if it wasn't we would have to make a return. They haven't objected to anything yet.

Q. In other words, you have all been honest and accurate. Now, what do you have before you?

A. Original vouchers of the City Controller's Office.

Q. Which one of these bundles would be a fair example of the others? Pick one out that I can look at, that you would like to have me look at to give me a general view of the situation.

A. (Witness hands bundle of papers to counsel).

Q. Does that bundle refer to a particular project?

A. No.

Q. Do you have more than one project in a bundle?

A. Yes.

Q. Well, do they all refer to the projects mentioned in the complaint?

Mr. Eckert:

If he knows.

Q. (Continuing) If you know. (Handing copy of complaint to witness). These that are marked "C", just

24a

Harry Hively—Direct

look at these—the contracts followed by the letter “C” are the ones we have in mind.

(p. 105):

The Court:

Couldn't the matter be accomplished by asking him if this was the practice followed on all projects that the Government was interested in?

Mr. Margiotti:

The Court has made a very good suggestion.

Q. Is this the practice that was followed on all PWA work?

A. Yes, sir.

(p. 106):

Q. Now comes the Federal Works Agency estimate, and I note that this is dated June 10, 1940, about fifteen days before the City estimate. Do you notice that? Is that correct?

Q. Will you look at that, please? Will you state whether that is the PWA form?

Q. (Continuing) Well, whose form is it? This (indicating in said papers) you said was the City's form. Is that correct?

A. That is right.

Q. And whose form is this, the yellow sheet?

A. That is the forms that the Government gave us to fill out, and they check it over too, and sign it and approve it.

Harry Hively—Cross

25a

Cross Examination

(p. 109):

Q. In making the transfers from the account in which you first deposited the PWA money to your bond account, I believe you testified that you did that without first getting approval of the PWA. Is that right?

A. We got approval—Before we started this we had a conference between the Controller's Office and everyone concerned, and they wanted us to put our money in a special bank account, and we told them we couldn't do it, we would work it out some other way, and we worked it out with this system, and the Government approved it.

(p. 110):

Q. Then you would transfer funds from the account in which you first placed the PWA money to your bond account, to reimburse your bond account for the amount you had paid the contractors, without getting any specific approval for those transfers before you made them. Isn't that right? Before you would make a transfer—in other words, before you drew a check on the account in which you first deposited the PWA funds and deposited that check to the credit of your bond account, would you get the approval of any PWA official?

A. Yes, there would be an ordinance go through Council authorizing us to transfer that money.

Q. An ordinance of the City Council?

A. Yes.

Q. But I say, did you get any approval from any Federal Government man?

A. We did it; they didn't disapprove of it, so they must have approved it.

Q. Well, ~~as~~ far as you know, was any specific approval obtained first before you made such a transfer, from the Federal Government?

26a

Harry Hively—Cross

A. I couldn't answer that question.

Q. Not as far as you know?

A. No.

Mr. Margiotti:

Wait a minute. He said he couldn't answer that question; that was the answer.

Q. Well, as far as you know, was any specific approval obtained from any PWA official?

A. I think there was.

Q. Was that in writing?

A. I don't know.

Q. Well, do you have any knowledge on the subject?

A. Not to answer the questions that you are—

Q. Pardon me?

A. Not to answer the questions that you are throwing at me that way. I would rather go back to the office and check them and answer the question later.

Q. You don't know?

A. Not positively.

Q. Didn't you testify on direct examination that every fifteen days or so you would draw a check on the account in which you first placed the PWA funds, and deposited that to the credit of your bond account, without getting the approval of the PWA in advance, and then later PWA would come around and audit your books, but they have never found anything wrong yet?

(p. 111):

A. Yes, they approved them, but I don't know whether we had the authority to go ahead and do it and then come around and check it later; I don't know whether we had that authority first.

M. M. Steen—Direct

27a

M. M. STEEN*Direct Examination*

(p. 114):

Q. Mr. Steen, I read to you from Form 230, being part of the contract between the Government and the School Board, reading as follows: "Construction Account.—A separate account or accounts, herein collectively referred to as the construction account, will be set up in a bank or banks which are members of the Federal Deposit Insurance Corporation. The advance grant payment, the intermediate grant payments, the proceeds from the sale of the bonds, exclusive of accrued interest—applicant's bonds—the final grant payment, and any other moneys which shall be required in addition to the foregoing to pay the cost of constructing the project will be deposited in the construction account promptly upon receipt thereof. All accrued interest paid by the Government at the time of delivery of the bonds will be paid into a separate account herein referred to as the bond fund. Payments for the construction of the project will be made only from the construction account." I call this provision to your attention, and now ask, what did the School Board do with reference to that provision? Exactly what did you do upon receipt of funds? How were they kept, and how were they paid out?

A. We had the construction account, PWA construction account, which is known in these various papers at different places as Item 15, and into that was placed the funds as you have read—the bonds that were sold for this purpose, the various payments made by the PWA at intervals as required by the contract, and any other funds that would be applicable to this particular work. The contracts were set up for each particular project as separate bank accounts for these eighteen separate contracts under Item 15, PWA construction account, and were paid out of

28a

M. M. Steen—Cross

that account as the certificates for payment, duly attested by the proper authorities, were received by the Board and were then honored by payment.

Q. When you say, "duly attested by the proper authorities"—attested by whom?

A. Well, these certificates for payment were signed by the resident engineer inspector for PWA, I signed them, and I don't know who the other signatures on there were. I would have to look at the contract to see.

Q. The contract would show?

A. Yes.

(p. 115):

Mr. Margiotti:

Q. Then, Mr. Steen, when you set up the separate bank account for each project, generally speaking, what share was paid by the Government and what was paid by the School Board?

A. Well, generally speaking, forty-five per cent was paid by the Government, and fifty-five per cent was paid by the School Board.

Q. And paid out of that particular fund then for the entire project?

A. That is correct.

Cross Examination

Mr. Eckert:

Q. And then, for your own accounting purposes, you would designate that with some number. Is that it?

A. Yes. It all came under Item 15, PWA construction account, and the moneys in there had to be certified to the Government that they covered the fifty-five per cent

M. M. Steen—Redirect

that we were obligated for. They had to be certified to by the bank officials.

(p. 116):

Q. But the School Board, could, if they had wanted to, pay the contractor even though the PWA inspector had not concurred in that particular payment?

A. I think they could.

Redirect Examination

Mr. Margiotti:

Q. If they did, would that be on their own responsibility?

A. I think it would.

Q. Mr. Steen, you said in answer to Mr. Eckert's question that the School District could pay estimates if they wanted to, but it would jeopardize their participation in the grant. What did you mean by that?

A. I said I thought they could, I thought the School Board could pay out on an estimate that they approved whether it was signed by the PWA inspector or not; but I thought if they did so, they would jeopardize the amount of forty-five per cent of that estimate that the PWA did not approve. You understand, I said I thought they could do that.

Q. You also think, since you are thinking, that it would be on their own responsibility?

A. I certainly think so, yes.

Q. Now, did the Government require you, in making up this account, construction account, referred to in the contract—did the Government require you to deposit any particular amount of a job before they gave you forty-five per cent?

30a

Harry Hively—Direct

A. The Government required that we deposit our fifty-five per cent.

Q. First?

A. Yes. We had to deposit that and have the bank certify to the fact that much was on deposit. As a matter of fact, if the funds—due to extras accumulating on the job, the amount we originally deposited would not insure completion—it fell short because of the extras coming in—they notified us. We would have to put an additional sum in to cover our participation.

Q. Before the Government would give you your forty-five per cent?

A. It wasn't so much a question of what they would give us. They notified us as soon as we began to run short. They had notice of all the payments made.

(p. 118):

Q. Did the Government, through PWA, exercise any supervision such as inspection or audit of bank deposits?

A. They did, yes. They audited all the accounts. Prior to the granting of the ten per cent, the ten per cent before completion, and the granting of additional ten per cent on final completion of the project, the books were audited, and they did not make the payments until the audit had indicated to their satisfaction that the accounts were correct.

HARRY HIVELY

Direct Examination

(p. 120):

Mr. Margiotti:

Q. Mr. Hively, that account in which you deposited the PWA money was called what?

Harry Hively—Direct

31a

A. Construction account of the different projects, I think.

Q. And how would you determine when to withdraw from the construction account and place it in the bond account?

A. Every fifteen days. As these estimates came through, and we paid the whole hundred per cent out of our money, then we wanted forty-five per cent back off of them.

Q. On each estimate paid, you would pay fifty-five per cent and you would get forty-five per cent from the construction account, put it in your account, and pay out the one hundred per cent. Is that right?

A. Yes.

Mr. Eckert:

He didn't say that. He said they would pay the contractor first one hundred per cent out of the bond account, and after that they would reimburse the bond account from what you call the construction account.

(p. 121):

Mr. Eckert:

Q. Isn't that right, Mr. Hively?

A. Yes.

Mr. Margiotti:

Q. When was that done?

A. Every fifteen days.

Q. All right. Now, today is pay day, we will say, and there is \$10,000.00 due the contractor on an estimate.

What would you do today?

A. Pay him out of our bond fund.

Q. What would you do with the construction fund?

A. Wait until the end of the fifteen days—our bond fund has a construction account, too. It is marked "Construction".

32a

Harry Hively—Direct

Q. You have a bond account, which is the City money, and the construction account was the PWA money. Today, for instance, is the fifteenth day of the month, and today an estimate must be paid to a contractor who has \$10,000.00 coming to him, in round figures. Now, what would the mechanics be? How would you pay him?

A. Pay him out of our bond fund.

Q. You would give him a check for \$10,000.00?

A. Yes.

• • • • •
Mr. Margiotti:

Q. What would you do with the construction account?

A. At the end of the next fifteen days, we would go over to the Treasurer's office with a list of these warrants and draw on the PWA construction account, and transfer the money back into our fund.

Q. You mean, then, that the \$4500.00 that was due from the construction account would not be withdrawn from the construction account—

A. It was at the end of every fifteen days.

Q. Would it not be withdrawn at the same time the warrant was paid?

A. No, sir.

(p. 121):

Q. It would be withdrawn fifteen days later?

A. Yes, sir. The Government did want us every day to do that, but it was too much bookkeeping, and then we agreed the fifteenth and the thirtieth would be all right.

Q. That was by agreement of the Government and the City?

A. Yes. Instead of writing two checks every month, you might have three or four hundred. Just the simplest method of bookkeeping.

Paul Hughes—Direct

33a

Mr. Eckert:

Q. That is true of all Government money—the City's as well as any other Government money?

A. It was all fully protected. Although it was the Government money, it was in our name and we protected it, to see it was taken care of.

PAUL HUGHES

Direct Examination

(p. 141):

Q. State how you handled your bank transactions with reference to the construction of this school.

A. We set up a separate bank account for this job only, under instructions from PWA to do so, and the officers of the Board were given authority to pay contractors upon approval of the work by the architect and approval by the PWA inspector.

Q. And what funds did you place in that account?

A. We placed in the fund the amount of approximately \$7,000 from the Board's current funds, the forty-five per cent as we received it from the Government, and the balance was a small bond issue which we floated.

Q. In other words, then, you put your fifty-five per cent and the Government's forty-five per cent in the same fund, and you paid for the entire job out of that fund?

A. That is right.

Q. I assume, after obtaining approval, the School Board did the paying?

A. Yes.

34a

Walter R. Dripps—Cross
Alfonse R. Ferrucci—Direct

WALTER R. DRIPPS

Cross Examination

(p. 156):

Q. These periodical estimates for partial payment, as well as the estimate for final payment, were presented to you and were the basis on which you wrote the checks, the checks that were given to the contractor in payment for his work. Is that right?

(p. 157):

A. Yes, sir.

Q. I am referring to the periodical estimates for partial payment and the final estimate which comprise a part of Exhibit 130.

A. That is right.

(p. 159):

ALFONSE R. FERRUCCI recalled, testified as follows:

Direct Examination

Mr. Margiotti:

Q. Mr. Ferrucci, I have asked you to produce the I-23 forms, which are the partial and final payments on the projects involved in this law suit so far as the City is concerned. Will you produce them now?

A. (Witness produces papers, which were thereupon marked Plaintiff's Exhibit No. 137.)

Q. You have produced Plaintiff's Exhibit 137. Will you state whether this exhibit contains the Castman contract—I will refer to them collectively.

A. Yes.

Walter D. Ferree—Redirect

(p. 160):

Q. Now, Mr. Ferrucci, do you know whether or not, in connection with each of these projects, the contractor furnished weekly payroll sheets such as Plaintiff's Exhibit 131?

A. No; I don't handle that.

Q. Who handles them?

A. That is in the contract department.

Q. And change sheets such as Plaintiff's Exhibit 132?

A. These come in to my office after they have been approved by the Public Works Administration.

Q. And if there were any changes in any of these projects, would the changes come through on this form?

A. Yes, sir.

WALTER D. FERREE

(p. 173):

*Redirect Examination**Mr. Margiotti:*

Q. Mr. Ferree, the inspector—you made two statements with reference to the PWA representative on the job. In one instance you said "resident engineer" of the PWA, and the other the "inspector". Did you intend that to be one and the same person?

A. I did. That was his correct title—resident engineer.

Q. Was there more than one on the job?

A. Yes.

Q. How many did they have?

A. Well, at different times they changed engineers. I think there were three.

36a

William C. Evans—Direct

Q. Were there three there at one time or only one at a time?

A. Only one.

Q. Any other PWA employees there?

A. No, other than their auditors.

Q. What did the auditors do?

A. Came in and audited our accounts periodically.

Q. What accounts?

A. Checked over our accounts in regard to payments, the estimated amount of the completion of the project, and so forth.

Q. Will you state whether or not they audited your bank account set up for this particular project?

A. Yes, sir.

WILLIAM C. EVANS*Direct Examination*

(p. 176):

Q. Were there any changes made in the electrical contract?

A. Yes, there was some change—some credits and some debits.

Q. Did those changes go through on Form PWA 84?

A. That is the form that was returned from Harrisburg on every change order. We submitted a sheet approved by the architect, and offered a Resolution and sent it to Harrisburg for approval, and it came back approved on that sheet from Harrisburg.

Q. You sent in your requisition, as it were?

A. We sent in a Resolution.

Q. Requesting a change, and they considered it?

William C. Evans—Direct

(p. 177):

A. Sometimes they sent it back and approved it for a certain amount or deleted it for a certain amount, if they thought we were being over-charged, and they said they would participate in the grant for a certain percentage.

Q. That usually applied to a change in conditions?

(p. 183):

Q. Mr. Evans, were your accounts audited by PWA?

A. They audited three different times.

Q. Will you state whether the project was supervised?

Mr. Eckert:

Objected to as calling for a conclusion, and as being leading.

Q. Were there any supervisors? Were there any PWA men around the job? If there were, just name them and tell what they were doing.

A. We had a Mr. Cole and a Mr. Flood, and I just can't recall the other gentleman's name who was there finally; but the docket was under a PWA supervisor, and he had one job only—to see that the building was built according to specifications.

Q. Did you have inspectors there, too?

A. We had one inspector that was hired by the Board, and, of course, the architects.

Q. What were the designations of these men who represented PWA on the job?

A. What was the designation?

Q. Was it inspectors, engineers, resident engineers, or what?

A. I don't know whether they were called PWA inspectors or resident engineers, but Mr. Cole was the first one, and then came Mr. Flood, and I can't recall the other

38a

William C. Evans—Cross

man. I have a mental picture of him, but I can't recall his name—a tall boy, with glasses on, heavy set. If I would hear his name, I would know it.

.

(p. 184):

Q. Is there any provision in your contract with the Government, and if there is please advise me where it is, that would refer to the nature of the control on inspection, whether it is joint or one is superior to the other?

A. It is my opinion that we were building the building—

.

A. (Continued) I don't recall. There may be, but I don't know specifically.

.

*Cross Examination**Mr. Eckert:*

Q. Mr. Evans, the School Board hired some architects. Is that right?

A. Hired an architect.

Q. And the architect prepared the plans for the school. Is that right?

A. Yes.

Q. And the architect then supervised the construction of the school in accordance with the plans and specifications which he had prepared for the School Board?

A. After the approval of the Department of Public Instruction, and the Art Commission, and the Department of Labor and Industry, and the PWA approved them, they started on the job.

Q. After the plans and specifications had been approved by those various bodies?

A. That is right.

William C. Evans—Cross

39a

(p. 185):

Q. And then the PWA also had an inspector?

A. That is correct.

Q. And he saw, also, that the work was progressing in accordance with the contract. Is that right?

A. That is right.

(p. 186):

Q. In whose name was this bank account that you referred to?

A. The School District has a number of funds. We have a general fund, a bond account, a coupon account, and a construction account, and a sinking fund. This was the construction fund of the School District of the Borough of Braddock.

Q. Just how would you get the funds from the PWA? Would they come in the form of a check to the order of the School District of the Borough of Braddock?

A. That is right. I don't know just exactly, but they were paid to the Treasurer of the School District of the Borough of Braddock. He deposited it in the account.

Q. The Treasurer of your School Board would deposit that check in this account in the name of the School District, with the suffix "Construction Account". Is that right?

(p. 187):

Mr. Eckert:

Q. Would there be a resolution of the School Board passed directing the payment of the several amounts that the electrical contractor received in payment for his work?

40a

William C. Evans—Cross

A. They are paid on the presentation of the I-23's, which were signed by the architect and the resident engineer of the PWA.

(p. 194):

Q. What is Form 290, Exhibit 153?

A. That is the final form which comes from the Government.

Q. Does this form cover the project cost and grant claimed, and the portion grant cost, and payment, and the complete final figures?

A. Yes, sir.

Q. Just how much was received and how much the School District put in—received from the Government, what the School District's share was, and how the money was spent?

Mr. Eckert:

If the Court please, I object to this, as calling for a conclusion and not the best evidence.

Mr. Margiatti:

It is only for the purpose of describing the paper, that is all.

A. That is the financial statement from the Government.

Q. And what is the purpose of obtaining Plaintiffs' Exhibit 153?

A. Why I brought it along?

Q. I say, what is the purpose of the Government furnishing such a statement?

Mr. Eckert:

If you know.

Q. (Continuing) If you know, of course.

A. I brought that along to answer questions. This gentleman (indicating Mr. Eckert) asked me how much

William C. Evans—Cross

41a

we had put in and how much the Government contributed, and that is all on this final sheet.

Q. I understand that; but how does it happen the Government furnishes this statement?

A. They give you a new sheet every time they give you a grant payment, every time they make a partial payment they send you a Sheet 290.

(p. 195):

Q. And in the end they send you a final figure?

A. Final figure.

Q. And this Plaintiffs' Exhibit 153 is the final figure?

A. A final figure.

Cross Examination

(p. 196):

Mr. Margiotti:

Q. And when the money comes in it is not allocated to any particular part of the project, but the whole project; but they break it down. And the electrical project is a part of the whole?

A. It is listed under the construction; it is part of the construction contracts.

Mr. Eckert:

Q. That is, in arriving at the total estimated cost of the project for the purpose of determining the amount of the PWA grant. Is that right?

A. The mechanical contracts and the general construction are all listed under construction on the breakdown sheet.

Q. That is when you are estimating the total cost, in applying for your grant in the first place. Isn't that right?

A. Yes, sir.

42a

Walter R. Dripps—Cross

Q. And then the Government makes a lump sum grant and pays you installments, as you have said, from time to time on account of that lump sum grant. Is that right?

A. As the work progressed to a certain percentage. (p. 197):

Mr. Margiotti:

Q. But as the payment is made they approve the payment, and you set forth the part that goes to the electrical contractors and the amount that goes to the other contractors, don't you?

A. What is that?

Q. Before payment is made on these final estimates, the Government approves that payment for a particular purpose—

Mr. Eckert:

Wait a minute. I object to that, as leading and not the best evidence. We have the periodical estimates for partial payment, which speak for themselves as far as that is concerned.

The Court:

The estimates would speak for themselves, as far as that is concerned.

A. You pay on the I-23's for each contractor.

Mr. Eckert:

Q. And when you say you pay, you mean the School District of the Borough of Braddock?

A. That is correct.

WALTER R. DRIPPS

Cross Examination

(p. 212):

Q. How often would the PWA inspector be there?

John C. Deal—Redirect

○43a

A. Every day.

Q. How long each day?

A. I would say on an average of about an hour a day, some days a little longer, some days not quite so long.

Q. Did he also have some other jobs under his inspection, do you know?

A. I understand that he had.

Q. Do you recall just who it was at the bank that put that "P. W. A." on the pass book (Exhibit 160)?

A. If I remember right, it was Mr. Herron, the assistant manager of the bank.

(p. 213):

Q. That wasn't put on there at the time when the account was opened up, was it?

A. No, that was put on later; it wasn't put on there at the time the account was opened, no, sir. That was put on there for the Borough's benefit and the bank's benefit, as an identification of funds when checks came in.

Q. All that was written on the pass book as its title was "Borough Blawnox Improvement Account No. 3"?

A. At the time the book was made up, yes, sir; and the first deposit was made in there. And later the "P. W. A." was put on there so as to keep the funds straight. We had a little trouble from getting funds mixed up.

JOHN C. DEAL

(pp. 224, 225):

Redirect Examination

Mr. Margiotti:

Q. Mr. Deal, if there were to be any changes made in the contract or the plans, the Council took action on that, you say?

44a

William A. England—Cross

A. That is right.

Q. And then were those changes submitted to PWA?

A. The architect would submit them to PWA.

Q. What for?

A. For approval.

Q. And if they were not approved, what happened? What happened if they were approved or if they were not approved?

A. Well, if they were approved, they would be paid with part of the Government money; and if they weren't, we had to pay for them ourselves.

Q. In other words, if you wanted to do some work and they didn't approve, you could do it and it would be your own responsibility?

A. That is right.

Q. But if they approved it, they bore forty-five per cent?

A. They may.

Q. Well, on approval that would be the understanding?

A. Not always. Sometimes they would approve it with the understanding we would pay for it, unless it finally ironed out in the end.

Q. But, generally speaking, on some understanding between yourselves and the Government?

A. That is right.

WILLIAM A. ENGLAND

(p. 233):

Cross Examination

Mr. Eckert:

Q. Who wrote the checks to pay the contractor?

A. I did.

Q. And did you do that upon presentment to you of those periodical estimates for partial and final payment?

A. After they were properly approved, and also approved by Borough Council, then a voucher was drawn in payment for work done.

(p. 238):

Redirect Examination

Mr. Margiotti:

Q. Now, Mr. England, in obtaining Government grant for this construction, who made the initial move? Was the initial move made by the Borough or by the Government?

A. The initial move was made by the Borough, through its Committee.

Q. In other words, you first decided to put up this building?

A. That is right.

Q. Then you made a request of PWA for a grant?

A. That is right.

Q. And upon that request came the offer?

A. That is right.

Q. And that was followed by the acceptance?

A. That is correct.

Q. By the way, did the inspector, the resident engineer or resident inspector of PWA, have a room or quarters on the job?

A. There was a room, or part of a room, prepared for him, but he never used it.

Q. The documents and the plans, specifications and plans—will you state whether or not they were forwarded to Harrisburg to the Regional Office of PWA?

A. They were.

46a

William A. England—Recross

Q. Was that done before they were given to the prospective bidders or after the bids had been received?

(p. 239):

A. Copies of the plans were taken to Harrisburg by the Committee and the architect, approved tentatively by Harrisburg—I mean PWA officials—and then, when everything was signed, all the documents were mailed to Harrisburg.

Q. In other words, then, you had the approval of your plans and specifications before you submitted them to bidders?

A. That is correct.

Q. Then after you got the contract, awarded the contract, you forwarded it to Harrisburg for approval?

A. We did.

Mr. Eckert:

If the Court please, I move the answers of the witness with respect to what the PWA did be stricken out as not the best evidence. I take it that was in writing, and the writing would be the best evidence of what the PWA actually did.

The Court:

That would be true. The motion is granted.

Recross Examination

(p. 244):

Mr. Margiotti:

Q. Mr. England, was there any money paid by the Government before the contract with the defendant was signed?

A. Well, I am not sure about that. You see, they paid

Mrs. Lena Z. Kenney—Direct
Mrs. Lena Z. Kenney—Cross

47a

in so much percentage—fifteen per cent, then ten per cent, then ten per cent more, and ten more.

Q. I understand that, but wasn't that all after the contract was signed?

A. I couldn't say.

Q. The contract provides how the Government is to pay?

A. Yes, it did.

MRS. LENA Z. KENNEY

Direct Examination

(p. 153):

Q. How were payments made to contractors by your School Board, Mrs. Kenney?

A. The architect's order and the PWA, and then brought before the School Board and paid on motion.

Cross Examination

(p. 255):

Q. Was the PWA inspector there all the time or not?

A. He was there frequently, but I don't know how often he was there.

Q. Well, was he there constantly?

A. No.

Q. He would be there off and on?

A. Off and on.

48a

*Earl D. Covell—Direct***EARL D. COVELL***Direct Examination*

(p. 472):

Q. Will you state what was the practice with reference to payment of the contractor for the work that he did?

A. The practice that was followed in—I believe I am safe in saying the majority of the cases—near the end of the month the contractor, the owner's representative and the Government representative would go over the job together and agree on how much work was done during that month and make a pencil memorandum, agree in advance on what would be put on the I-23, the monthly estimate, so called. The contractor would then go back to his office and prepare this I-23 for submission to the owner. Having prearranged the amount and the amount of work, the owner would approve it, turn it over to the Government representative for his approval. He may or may not approve the full amount. If he does not approve the full amount, he writes a non-compliance list at the bottom, which are the exceptions in his approval, and he states if the owner pays in excess of a certain figure he does so at his own risk, and signs his name to that approval and to the list of non-compliance.

Q. When does the contractor get his money?

(p. 473):

A. In the contract the owner obligates himself to pay the 15th of the following month.

Q. But is the contractor paid after the I-23 is approved by the representative of the PWA?

A. After the resident engineer inspector approves it, he turns it over to the owner's representative for payment.

Earl D. Corell—Cross

49a

Cross Examination (Resumed)

Mr. Eckert:

Q. The I-23's, then, as I understand it from your testimony, are made up by the contractor in accordance with this pencil memorandum that you refer to?

A. That is the preferred procedure, yes, sir. In many cases there was no pencil memorandum; he would make it up, what he thought ought to be due him, and submit it for approval.

Q. But the other was the practice in you said eighty per cent of the cases?

A. I should say so, on the better jobs, eighty per cent of the cases.

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2.1

United States of America
Eastern District of Pennsylvania } *Sct.*
Third Judicial Circuit

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appellees' Appendix, filed April 22, 1942, after the decision of the Court, containing additional portions of the original transcript of record not included in the Appellants' Appendix in the case of

United States of America, ex rel. Morris L. Marcus
 and Morris L. Marcus in His Own Behalf vs.
 William F. Hess et al., Appellants, (No. 7841),

on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 24th day of April in the year of our Lord one thousand nine hundred and forty-two and of the Independence of the United States the one hundred and sixty-sixth.

WM. P. ROWLAND,
 Clerk of the U. S. Circuit Court of
 Appeals, Third Circuit.

(Seal)

544

[fol. 545] [Stamp:] Office of the Clerk, Jun. 17, 1942, Supreme Court, U. S.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. —

UNITED STATES OF AMERICA, ex rel., MORRIS L. MARCUS, and
MORRIS L. MARCUS in His Own Behalf, Petitioners,

v.

WILLIAM F. HESS, et al.

Stipulation

Subject to This Court's Approval, It Is Hereby Stipulated and Agreed, by and between the attorneys for the respective parties hereto, that for the purpose of the Petition for a Writ of Certiorari, the printed record may consist of the following:

1. Appendices to the Respondents' briefs in the United States Circuit Court of Appeals for the Third Circuit.
2. Appendix to the Petitioners' brief in the United States Circuit Court of Appeals for the Third Circuit.
3. The proceedings had before the United States Circuit Court of Appeals for the Third Circuit and the Opinion of that Court.

Charles Margott, Attorney for Petitioners.

Dated this 15th day of June, 1942.

William H. Eckert, Eugene B. Strassburger (s), Attorneys for Respondents. —

Dated this 13th day of June, 1942.

[fol. 546] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 173

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 547] IN SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 173

STIPULATION—Filed November 10, 1942

Subject To This Court's Approval, It Is Hereby Stipulated And Agreed, by and between the respective parties hereto, that for the purpose of consideration of the above entitled case upon Writ of Certiorari, the printed record shall consist of the papers which, by stipulation, constituted the printed record on Petition for Certiorari.

It Is Further Stipulated And Agreed that either of the parties hereto may refer in his brief to the record on appeal in the Circuit Court of Appeals for the Third Circuit as certified by the Clerk of that Court and filed in the Supreme Court of the United States.

Homer Cummings, Attorney for Petitioners.

Dated this 7th day of November, 1942.

William H. Eckert, Eugene S. Marbury, Attorneys
for Respondents.

Dated this 6th day of November, 1942.